

The powers of the European Parliament under the Lisbon Treaty

The role of the European Parliament in invigorating the European citizenship and in combating the EU's democratic deficit

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Introduction

Historical origins of the European Parliament can be traced back to the times of establishment of The European Coal and Steel Community ('ECSC'), which took place in 1951 with signing of the Treaty establishing the European Coal and Steel Community¹, also known as the 'Treaty of Paris', (hereafter 'ECSC Treaty'). According to Jean Monnet, the main figure behind the 'birth' of the new idea of economic integration in Western Europe after World War II, a supranational form of this integration was the best path for Europe. Various security and economic challenges which Western Europe was facing at that time, could not have been met adequately in the manner of traditional inter-governmental system of international cooperation, based notably on the rule of unanimity in decision-making process.² Contrary to the deployment of this standard mode of collaboration amongst the states, Monnet suggested a different solution based on programmatic limitations of their sovereignty. Part of the sovereignty of the Member States should have been thereby contractually transferred to the new community - The European Coal and Steel Community, and its institutions benefitting from independent decision-making power. These institutions had to operate within beforehand agreed and precisely defined sphere of activities, under the condition that participating Member States would be willing to obey decisions adopted by one of the supranational bodies of the organisation, at that time named the "High Authority".³ Thereby the fundamentals of an utterly new and by nature almost revolutionary concept of an internationally operating entity had been laid down.

Despite the fact that ECSC had been initially established as an organisation with a predetermined duration of 50 years,⁴ which means that transfer of the part of the sovereignty of its Member States was supposed to be only temporary, the question of the lack of democratic control over decisions of the High Authority and its political legitimacy emerged instantly and almost inevitably. The main reason was the fact that the High Authority has been endowed with supranational decision-making power. This power was not only completely independent from the one belonging to ECSC Member States, represented in the Community by means of the Council,⁵ but, it was in fact fully binding upon them at the same time.⁶ Accordingly, the issue of mechanism how to hold a political control over the decisions of the High Authority has arisen subsequently. For that reason the Treaty of Paris could not have left the question unanswered if the very operation of the ECSC itself wanted to be regarded as having political legitimacy.

Taking these realities into account it should be clear why under such *modus operandi*, a need to introduce a body in order to rebalance the institutional system of ECSC in favour of more transparency and political accountability of its internal decision-making procedures, has emerged. As Jean Monnet expressed in this regard, '[i]n a world where government authority is derived from representative parliamentary assemblies, Europe cannot be built without such

¹ Treaty establishing the European Coal and Steel Community 24.7.1952

² Berthold Rittberger, 'Removing conceptual blinders: Under what conditions does the 'democratic deficit' affect institutional design decisions?' (2003) 5 Constitutionalism Web-Papers, ConWEB <<http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/ConWEBFiles/Fileupload,38342,en.pdf>> accessed 20 February 2012 11

³ *ibid.*

⁴ Article 97: 'The present Treaty is concluded for a period of fifty years from the date of its entry into force.' ECSC Treaty thus expired on 23.07.2002

⁵ ECSC Treaty, Article 27

⁶ ECSC Treaty, Article 14

an assembly.⁷ In this spirit it was agreed by the founding powers, i.e. Belgium, France, Germany, Italy, Luxembourg and Netherlands, that the body established for such a purpose would bear the name “Common Assembly”, usually referred to simply as an “Assembly”. The name chosen thereby indicated the origin of the inspiration in the existence of parliamentary assemblies of the ECSC Member States.⁸

Already in the time preceding the inception of the Common Assembly, some discontent was present in regard to its main functions, and, more importantly to the nature of actual powers entrusted to this body by ECSC Member States. While France had a rather modest vision for the Assembly, according to which this institution should have had plainly some control power over the High Authority, Germany, true to its federal tradition, was pushing for a stronger parliamentary body with a real stake in all decision-making and budgetary procedures within the emerging Community.⁹ Concerning the point of view of “Benelux” countries, they were more in favour of establishing a parliament without any legislative powers, reasoning that it would not be able to affect the policies of ECSC in potentially unpredictable or uncontrollable manner.¹⁰ In the end the idea of the weaker-powers concept of institution prevailed among the founding Member States of the new Community. The Common Assembly has therefore been established by virtue of the Treaty of Paris as a body whose main function was to provide parliamentary and democratic control over the High Authority.¹¹

The Assembly at its dawn consisted of 78 representatives, chosen on an annual basis from among representatives of the national parliaments of the Member States. The fact that members of the Common Assembly were at that time “sitting on two chairs” at the same time, that is one of their national parliament, from where they were delegated to the Assembly where they held a position of the ‘*representatives of the peoples of the member States of the Community*,’¹² helps as an indicator of actual reality in which the Assembly was initially meant to be operating. To put it more clearly, the actual political gravity of the Common Assembly at the time of inception of the European Coal and Steel Community was more of a symbolic rather than functional nature. The Assembly was present more to resemble a democratic and functional severity of the national parliaments of the ECSC Member States than to operate as one of them. With regard to ECSC Treaty¹³, the very first Common Assembly has started its existence as an instrument of political scrutiny over the High Authority. Interestingly enough, despite of its designation of “Assembly”, this body lacked such essential powers typical for national parliaments as the legislative and budgetary competences.¹⁴ Power of the Common Assembly to bring the High Authority under the

⁷ Berthold Rittberger, ‘Removing conceptual blinders: Under what conditions does the ‘democratic deficit’ affect institutional design decisions?’ (2003) 5 Constitutionalism Web-Papers, ConWEB < <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/ConWEBFiles/Fileupload,38342,en.pdf>> accessed 20 February 2012 12

⁸ ECSC Treaty, Article 20

⁹ Berthold Rittberger, ‘Removing conceptual blinders: Under what conditions does the ‘democratic deficit’ affect institutional design decisions?’ (2003) 5 Constitutionalism Web-Papers, ConWEB < <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/ConWEBFiles/Fileupload,38342,en.pdf>> accessed 20 February 2012 13

¹⁰ *ibid* 14

¹¹ ECSC Treaty, Article 20

¹² *ibid*

¹³ ECSC Treaty, Article 23, ‘*The High Authority shall reply orally or in writing to all questions put to it by the Assembly or its members.*’, Article 24, ‘*The Assembly shall discuss in open session the general report submitted to it by the High Authority.*’

¹⁴ Franco Piodi, ‘Towards a Single Parliament: The Influence of the ECSC Common Assembly on the Treaties of Rome’ (European Parliament, 2007) < http://www.europarl.europa.eu/pdf/cardoc/plmt_50ans_en.pdf> accessed 21 February 2012

political control through the right to censure,¹⁵ was of undoubted gravity, even without possibility to express a direct lack of confidence to the executive.¹⁶

Over time, after the establishment of the other two European integration Communities, namely the European Atomic Energy Community¹⁷ (“EURATOM”) and the European Economic Community¹⁸ (“EEC”), the existing Common Assembly took over the role of the Parliamentary Assembly within their institutional order. In accordance with “The Convention on certain Institutions common to the European Communities”¹⁹ the Common Assembly herewith became the institution common to all the three Communities existing back then, i.e. the ECSC, EURATOM and EEC. For that reason, the single Assembly has smoothly benefited from the *acquis* accumulated by its forerunner operating within the ECSC institutional system. Thereby it retained all the rights and powers which it had had gained in the five years of previous existence, and continued to safeguard parliamentary tradition which it had been attempting to built up in the process of intensification of European integration.²⁰

The number of members of the Assembly has risen up to 142 representatives subsequently, yet the manner of their establishment remained the same - they were still appointed for office by the way of delegation from the national parliaments. However, seeds for change in this regard have been planted by the “Treaty establishing the European Economic Community” (“EEC Treaty”), which presumed that the Assembly could have been in the future established by the way of election by direct universal suffrage in Article 138.²¹ After all, it was as late as the 1979 when this proposal turned into reality and the very first direct elections to the Common Assembly ever took place. In the meantime there have been some minor changes in the denomination of the Common Assembly as well. The first one brought about the new title “European Parliamentary Assembly”, which was substituted in 1962 for the notion of the “European Parliament”, which started to be used as an official version in all three European Communities since then on.²²

Accordingly, renaming “Common Assembly” with “European Parliament” - which may appear to be only a linguistic issue - can with regard to following course of European integration indicate a more substantial change. Just as the ECSC initially did, the body of European Parliament has proven to follow the path of emerging entity ‘whose future prospects far exceeded its current competences’²³ within the European integration system. Progressive extension of ECSC powers and subsequently those of EEC and EURATOM, went hand in hand with gradual consolidation of the position of the European Parliament within the

accessed 21 February 2012 16

¹⁵ ECSC Treaty, Article 24

¹⁶ Directorate-General for the Presidency ‘Description of the main holdings and collections’ (European Parliament, 2008) <http://www.europarl.europa.eu/pdf/cardoc/fonds_collections_en.pdf> accessed 21 February 2012 3

¹⁷ By means of the Treaty establishing the European Atomic Energy Community, 25.03.1957

¹⁸ By means of the Treaty establishing the European Economic Community, 1.1.1958

¹⁹ Section I, The Assembly, Article 1, Directorate-General for the Presidency ‘Description of the main holdings and collections’ (European Parliament, 2008) <http://www.europarl.europa.eu/pdf/cardoc/fonds_collections_en.pdf> accessed 21 February 2012 p. 3.

²⁰ Franco Piodi, ‘Towards a Single Parliament: The Influence of the ECSC Common Assembly on the Treaties of Rome’ (European Parliament, 2007) <http://www.europarl.europa.eu/pdf/cardoc/plmt_50ans_en.pdf> accessed 21 February 2012 38

²¹ EEC Treaty, Article 138 par. 3 “*The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.*”

²² Directorate-General for the Presidency ‘Description of the main holdings and collections’ (European Parliament, 2008) <http://www.europarl.europa.eu/pdf/cardoc/fonds_collections_en.pdf> accessed 21 February 2012 4

²³ Franco Piodi, ‘Towards a Single Parliament: The Influence of the ECSC Common Assembly on the Treaties of Rome’ (European Parliament, 2007) <http://www.europarl.europa.eu/pdf/cardoc/plmt_50ans_en.pdf> accessed 21 February 2012 16

institutional set-up. It should be noted here that the united institutional arrangement of all given Communities came into existence in 1967, when the “Merger Treaty”²⁴, introducing a single executive system (i.e. single Council and Commission) for the sake of more efficiency,²⁵ entered into force.

As the very process of European integration was moving further ahead, constantly penetrating into new areas of operation, it started to be clear that some adjustments of initial powers of institutions established within the European Communities were required. Accordingly, as a reaction to creation of a system of the own resources,²⁶ accompanied herewith with a decline of budgetary powers of the national parliaments, the need for re-balancing measure heading towards a more democratic control emerged. This demand was partially remedied in 1970 by the adoption of the Treaty of Luxembourg²⁷ which granted certain budgetary powers the European Parliament. The powers of the Parliament were yet extended by virtue of the Treaty of Brussels²⁸ adopted in 1975, through which the European Parliament obtained the right to reject the annual budget of the Communities and to grant a discharge for implementation of the budget to the Commission.²⁹

In spite of the above mentioned institutional rearrangements, one might observe that the years between establishment of EEC and EURATOM in 1957 and the first direct elections to the European Parliament in 1979 could be characterized as a kind of “preparatory period” in a way how they preceded the time of more significant changes in regard of the powers of the Communities’ institutions in 1980-ies and 1990-ies.³⁰ Namely, within this period the European Parliament had at its disposal only advisory and supervisory powers,³¹ whereas its strongest “weapon” was a motion of censure against the Commission. The Parliament could assume some role in the legislative process as well, but since that role was plainly consultative at the time, one can hardly speak about real power. Nevertheless, the position of the European Parliament *vis-à-vis* its counterparts in the institutional triangle has meanwhile managed to solidify in somewhat “unofficial” manner, in a sense of widening its power of the democratic scrutiny through the presence of the members of the Council and Commission at

²⁴ Treaty establishing a Single Council and a Single Commission of the European Communities, OJEC 152 of 13.7.1967

²⁵ Finn Laursen, ‘The Merger Treaty 1965: The First Reform of the Founding European Community Treaties’ Paper prepared for First Jean Monnet Conference, “From Paris to Lisbon: EU Treaties and their Reforms”, Dalhousie University, Halifax, NS, Canada, 22-23 March 2010.
<http://euce.dal.ca/Files/The_Merger_Treaty_1965_by_Finn_Laursen.pdf> accessed 11 March 2012

²⁶ A system of own resources was accepted as necessary corollary of the creation of a common market for agricultural products., in Berthold Rittberger, ‘Removing conceptual blinders: Under what conditions does the ‘democratic deficit’ affect institutional design decisions?’ (2003) 5 Constitutionalism Web-Papers, ConWEB <

<http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/ConWEBFiles/Fileupload,38342,en.pdf>> accessed 22 February 2012 14

²⁷ Treaty amending certain budgetary provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities, OJEC 02.01.1971

²⁸ Treaty amending certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities, OJEC 31.12.1977

²⁹ European Parliament Fact Sheets, ‘Developments up to the Single European Act’ (European Parliament, 2001)< http://www.europarl.europa.eu/factsheets/1_1_2_en.htm > accessed 23 February 2012

³⁰ Directorate-General for the Presidency, ‘Description of the main holdings and collections’ (European Parliament, 2008) < http://www.europarl.europa.eu/pdf/cardoc/fonds_collections_en.pdf > accessed 21 February 2012 5

³¹ EEC Treaty, Article 137: ‘*The Assembly, which shall consist of representatives of the peoples the States brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon it by this Treaty.*’

Parliamentary meetings for the purpose to deliver explanations on their activities, or practice of addressing written and oral questions to these institutions, obliged to provide an apt answer in return.³²

The truly cardinal shift on the Parliament's path towards gaining more political and functional gravity came about in 1986 by adoption of the Single European Act,³³ amending the Treaties establishing the European Communities in a rather significant manner. Since one of the main goals of the Act was to increase the role of the European Parliament in order to rectify democratic deficit present in the Communities' decision-making process, a new co-operation procedure was introduced,³⁴ finally providing Parliament with an actual legislative power, even though it was still limited. The European Parliament thereby acquired the right to participate in legislative process together with the Council in about twelve legal bases, which marked a crucial point in its overall emancipation and was an attempt to decrease fabled democratic deficit of the Communities.³⁵ Another significant milestone came into being by adoption of the Maastricht Treaty,³⁶ establishing a co-decision procedure in certain areas of legislation and at the same maintaining but widening the scope of existing co-operation procedure to new areas. The European Parliament had by virtue of these changes finally made good on its denomination of a "Parliament", since its metamorphosis into a genuine co-legislator has thereby began. Moreover, the newly introduced right of the Parliament to have a word on final approval of the Commission's cabinet was not of negligible political value either.³⁷

The Treaties following establishment of the European Union in 1993, which provided for a "roof" to the three Communities,³⁸ yet upheld the trend set by the previous ones. The Treaty of Amsterdam³⁹ thus reformed existing decision-making procedures by simplification and extension of co-decision to most of the areas of Communities' legislation, whereas number of areas, where co-operation procedure used to be applied, was thereby significantly reduced. Furthermore, control powers of the Parliament over executive bodies proved to be a real 'heavy weapon', which became apparent when the "Santer" Commission was put under motion of censure for the very first time, which consequently lead to its eventual resignation. By means of the Nice Treaty⁴⁰ the powers of European Parliament have been increased again, when it explicitly gained the stance in direct actions in front of the Court of Justice.⁴¹ The scope of co-decision procedure has been yet widened plus a new power indicating the role of the Parliament as a "guardian" of the rights established under auspices of the European Union appeared, stipulating the right of the European Parliament to be asked for its opinion when the

³² Directorate-General for the Presidency, 'Description of the main holdings and collections' (European Parliament, 2008) < http://www.europarl.europa.eu/pdf/cardoc/fonds_collections_en.pdf > accessed 21 February 2012 6

³³ Single European Act, OJ L 169 1.7.1987

³⁴ Single European Act, Article 6 par. 1

³⁵ European Parliament Fact Sheets, 'Developments up to the Single European Act' (European Parliament, 2001) < http://www.europarl.europa.eu/factsheets/1_1_2_en.htm > accessed 23 February 2012

³⁶ Treaty on European Union, OJ C 191 1.11. 1993

³⁷ European Parliament Fact Sheets, 'The European Parliament: historical background' (European Parliament, 2000) < http://www.europarl.europa.eu/factsheets/1_3_1_en.htm > accessed 24 February 2012

³⁸ The term 'European Economic Community' has been replaced by the term 'European Community', Maastricht Treaty, Article A

³⁹ Treaty of Amsterdam, OJ C 340 1.5. 1999

⁴⁰ Treaty of Nice, OJ C 80 1.2. 2003

⁴¹ Treaty of Nice, Article 34

Council declares existence of the risk of a serious breach of fundamental rights in some of the Member States.⁴²

The period of time after adoption of the Nice Treaty has brought the European Union on the crossroads. It was about a time to depict on developments through which it has passed so far and capture the essence of an entity into which it was meant to evolve. In spite of the attempt to cope with the institutional consequences of “big bang enlargement” when the 10 new countries have become the Union’s Member States at once, the need for continuation of the process of institutional reforms persisted, and, moreover, the issue of necessity of fundamental reform of the Union has been put on the table by the European Parliament. One of the main reasons was the fact that overall system of the Union’s operation has by the years become unbearably complex and therefore too distant from the comprehension of the European citizens. Moreover, a time has come for questioning its further general political direction. Symbolically marked by elaboration works on the “Constitution for Europe”, in order to bring about simplification and systematization of the Union, heading towards more federalism, was a clear signal of seeking for new identity. Irreplaceable position should have been thereby awarded to fundamental rights, protection of which the European Union claimed a significant allegiance. All in all, the main message behind the upcoming constitutional change was to bring the European Union closer to its citizens, making its system more comprehensible, focus the operation on areas with greater significance to “everyday life” of citizens, transforming its functioning into more transparent and efficient, and, last but not least strengthening Union’s position on international arena.⁴³

The adoption of the Constitution would have had important implications for the European Parliament, as far as it meant to extend its powers in decision-making procedures and create a new system of distributing seats between the Member States.⁴⁴ However, since the very project of the Constitution for Europe has failed due to the disapproving referenda in France and Netherlands,⁴⁵ a “period of reflection” has been launched to find a solution for that situation.⁴⁶ It can be assumed that the need for a systematic readjustment of Union’s functioning has endured, even though the way chosen by the stakeholders in the Constitution project proved to be a bridge too far at a given time. In the end of the reflection period a decision to carry out the needed reforms in a more standard manner, meaning the way of amending existing Treaties rather than replacing them with a single text, was delivered. The new “Reform Treaty”, later on called “Lisbon Treaty”,⁴⁷ signed on the 13th December 2007, has taken over most of the Constitution agenda in so-called “piece-meal” way. Impact of this Treaty at the European Parliament’s competences will be the main concern of the following chapters, whereas these should be examined from the viewpoint of the Parliament’s significance for the EU citizenship and combating democratic deficit in the European Union.

⁴² Treaty of Nice, Article 1 par. 2

⁴³ European Convention, ‘Laeken Declaration on the Future of the European Union’ (European Convention, 2001) < <http://european-convention.eu.int/pdf/lknen.pdf>> accessed 24 February 2012

⁴⁴ A Constitution for Europe Fact Sheets, ‘The Union’s institutions - The European Parliament’ (Europa, 2001)<http://europa.eu/scadplus/constitution/parliament_en.htm>accessed 11 March 2012

⁴⁵ However, as German MEP aptly noted in this regard, the “problem with plebiscites is that people virtually never vote on the issue in question” Adam Kreidman, ‘Correcting Past Mistakes: The Failure of the European Constitution and Its Resurrection as the Lisbon Treaty’ (2008) 5 (12) *Jean Monnet/Robert Schuman Paper Series*< <http://aei.pitt.edu/9021/1/KreidmanCorrectingPastEUMA08ediCORRECTED.pdf>> accessed 23 February 2012 3-4.

⁴⁶ Treaty of Nice: a Comprehensive Guide, ‘Introduction’ (Europa,2008)<http://europa.eu/legislation_summaries/institutional_affairs/treaties/nice_treaty/nice_treaty_introduction_en.htm > accessed 24 February 2012

⁴⁷ Treaty of Lisbon, OJ C 306 1.12.2009

1. The European Parliament and its role in invigorating the European citizenship

The aim of this chapter is to elaborate on the connection between the role and operation of the European Parliament under the Lisbon Treaty and the concept of the European citizenship. Main emphasis will be put on depicting the overall picture of the modes in which the European Parliament is able to contribute to meaningful exploiting of the EU citizenship status by the way of analysis of powers of the Parliament prescribed by the Lisbon Treaty and actual practices employed.

1.1 European citizenship

1.1.1 The ideological background to European citizenship

The very idea of European citizenship, i.e. citizenship of the European Union, came to life with the “birth” of the Union itself, that is with the adoption of the Maastricht Treaty in 1992. However, an imaginary inception of this concept can be traced further back to history of European integration project. Yet in 1984 an ad hoc “Committee on People’s Europe” was established by the Fontainebleau European Council to “prepare and coordinate action” in the aim to “respond to the expectations of the people of Europe by adopting measures to strengthen and promote its identity and its image both for its citizens and for the rest of the world.”⁴⁸ As it is noticeable from the Committee’s mandate, a subsequent concept of the EU’s citizenship can be understood as an expression of searching for an identity common to the European peoples and thereby to the identity of the Union itself. Theodora Kostakopoulou states in this regard, that ‘its (EU’s) main business is to find an identity which is capable of inducing feelings of belonging and the involvement of European peoples,’⁴⁹ a goal which seems logical and perhaps an indispensable consequence of the project of European integration as such.

Devotion to the idea of strengthening of protection of the European peoples by introduction of the European citizenship was further confirmed by the Rome European Council held in 1990, which committed the Member States to examine the concept of European citizenship with a view to provide it with substance in area of civil and political rights as well as social and economic rights, and to ensure protection of the Member States’ nationals beyond borders of the European Union. In such spirit, after the actual establishment of European citizenship came true, the Court of Justice confirmed the ultimate nature of desirability of the European citizenship in *Grzelczyk*⁵⁰ case, issuing a statement that the ‘Union citizenship is destined to be fundamental status of nationals of the Member States’ which was repeatedly used in its case-law afterwards.⁵¹

⁴⁸ Pietro Adonnino, ‘A People’s Europe – Report from the *ad hoc* Committee’ (Bulletin of the European Communities, 1985) < http://aei.pitt.edu/992/1/andonnino_report_peoples_europe.pdf > accessed 31 March 2012

⁴⁹ Theodora Kostakopoulou, *Citizenship, identity and immigration in the European Union – Between past and future* (Manchester University Press 2009) 14

⁵⁰ Case C – 184/99 *Grzelczyk* [2001] ECR I-6193

⁵¹ Paul Graig and Grainne de Burca, *EU Law: Text, Cases and Materials* (5th edn, Oxford University Press 2011) 820

In spite of claiming allegiance to the philosophy of European citizenship as to the “fundamental status” of a national of some of the EU Member State(s), it stays rather questionable what does the notion of fundamental status actually stand for. Basically, it could be perceived in two ways. Firstly, as a basic and the “most important” citizenship status, usurped by means of its establishment from the traditional realm of the Member States, following the supranational character of the European Union and acquiring thereby some kind of “upper quality”. Another point of view is also thinkable: an assimilation of this status with an imaginary “common ground” or a “lowest denominator” in the sphere of rights pertaining to their bearers within the Union, thereby providing the EU citizens with a guarantee of non-discriminative treatment regardless of their Member State citizenship. As Grahame Robert Anderson reconciles in this respect, the “Union citizenship is fundamental in the sense that it is the safety net once national citizenship leads to erroneous results.”⁵²

Besides the importance of the role of the European citizenship for internal sphere of the Union, its significance for external dimension of the EU’s activities should not be omitted either. “As an emerging polity, the EU/EC has to foster a sense of solidarity among European peoples who would not hesitate to participate in the project of European unification and support it in times of crisis.”⁵³ After unique and unprecedentedly new type of international cooperation in form of the European Communities, later “roofed” by the European Union, has been brought to life, it started to fight for its position at the international scene. It comes as a logical consequence that ‘the position of the European Union as an international actor would be strengthened by the creation of a collective identity *vis-à-vis* other parts of the world.’⁵⁴ To conclude, European citizenship has played the role of an imaginary “paste” instrumental in the process of consolidation of the position of the European Union like a respectable and internationally significant legal entity.

1.1.2 Legal background

The European citizenship was established by the Maastricht Treaty, thus it has become operational by its entry into force on the 1st of November 1993. According to Article A, common for all the pillars established by the Maastricht Treaty,⁵⁵ *‘This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.’* Further on, by setting the objective in Article B *‘to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union’*, a special attention has been herewith given to the concept of European citizenship. The very foundation of the “Citizenship of the Union”, as according to the precise wording of the Treaty, can be found in its Part Two, amending ECSC Treaty, namely Articles 8 to 8e. Under the terms of these provisions, every person holding the nationality of a Member State is thereby a citizen of the European Union. Self-evident fact that European citizenship is contingent on one’s national citizenship status has been confirmed and fortified by the Treaty of Amsterdam which added a

⁵² Graham Robert Anderson, ‘The notion of EU citizenship as the “fundamental status” of member state nationals’ (Le petit juriste, 2010) < <http://www.lepetitjuriste.fr/english-law/english-law/the-notion-of-eu-citizenship-as-the-fundamental-status-of-member-state-nationals>> accessed 11 March 2012

⁵³ Theodora Kostakoupulou, *Citizenship, identity and immigration in the European Union – Between past and future* (Manchester University Press 2009) 14

⁵⁴ *ibid*

⁵⁵ The European Union as established by the Maastricht Treaty has been grounded upon the three pillars; the first pillar encompassing the three existing European Communities (ECSC, EURATOM and EC herewith renamed from the original notion ‘EEC’), the second pillar covering the Common Foreign and Security Policy and the third pillar on Justice and Home Affairs. Whereas the first pillar was built on the supranational “Community” method, the other two were established in the mode of intergovernmental cooperation.

paragraph explicitly stating that European citizenship is complementary to and thus it shall not replace national citizenship. The Treaty of Lisbon has embraced substance of all these rules in the Article 9 of the Treaty on European Union⁵⁶ ('TEU')⁵⁷ and Article 20 par. 1 of the Treaty on the Functioning of the European Union⁵⁸ ('TFEU').⁵⁹ Yet, it has brought about slight change in the wording, stating that *Citizenship of the Union shall be additional*⁶⁰ rather than complementary to national citizenship, as stated in previous Treaties. Nonetheless, this, at the first sight cosmetic modification, can provoke the question of subsequent development in this regard, since, as Annette Achrauwe points out, 'If Union citizenship complements national citizenship, there is no Union citizenship without national citizenship. If Union citizenship is additional to national citizenship, then there might one day be Union citizenship without national citizenship.'⁶¹

Holding European Union citizenship nowadays entitles its bearers to a set of rights provided for in both TEU and TFEU, such as the right to move and reside freely on the territory of any of the Member States,⁶² or the right to vote and to stand as a candidate in the European Parliament and municipal elections in a Member State of residence under the same conditions as the Member State nationals.⁶³ Specific benefit consists in reassurance of diplomatic and consular protection in the territory of third countries, which enables European citizens to enjoy such protection by any Member State in case that the Member State of their nationality does not have representation in such a place.⁶⁴ The right to submit a petition to the European Parliament and the right to complain to the European Ombudsman have been established accordingly.⁶⁵ The other provisions brought about by the Maastricht Treaty with straightforward connection with EU's citizenship have been introduced in provisions 138a, 138d, 138e within Article G amending the EEC Treaty, whereas the first two elaborate further on the right to submit petition to the European Parliament and right of complaint to the European Ombudsman and the latter specifies the importance of political parties established at the European level for process of political integration of the Union, forming thereby European awareness and expressing political will of the European citizens. Last but not least, provisions 20c, 20d under Article H amending ECSC Treaty provide for the right to address with petition the European Parliament and complain to the European Ombudsman with regard to the ECSC's sphere of activity.

The Treaties following the Maastricht Treaty have assumed substance of its original provisions and added some new ones, such as the right of every European citizen to write and obtain an answer from any of the EU institutions in any of its official languages,⁶⁶ and the right to access the European Parliament, Council and Commission documents.⁶⁷ All of above

⁵⁶ *Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.*

⁵⁷ Consolidated Version of the Treaty on European Union [2010] OJ C 83/01 EN. 30.3. 2010

⁵⁸ *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.*

⁵⁹ Consolidated Version of the Treaty on the Functioning of the European Union [2010] OJ C83/01 EN. 30.3. 2010

⁶⁰ TEU, Article 9

⁶¹ Annette Achrauwe, 'EU Citizenship in the Treaty of Lisbon: Any Change at all?' (2008) 15, 103-112 Maastricht Journal of European and comparative law < <http://heinonline.org> > accessed 27 April 2012

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⁶² TFEU, Article 20 par. 2 a)

⁶³ TFEU, Article 20 par. 2 b)

⁶⁴ TFEU, Article 20 par. 2 c)

⁶⁵ TFEU, Article 20 par. 2 d)

⁶⁶ Treaty of Amsterdam, Article 11

⁶⁷ Treaty of Amsterdam, Article 45

mentioned provisions have been eventually taken over by the Treaty of Lisbon, where they can be found both in the body of TEU⁶⁸ and TFEU.⁶⁹ The Treaty of Lisbon has introduced some novelties as well, such as the institute of the “citizens’ initiative”, whereby ‘*not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treatie.*’⁷⁰ This and other legal regulations with specific significance for European citizenship in relation to the operation of the European Parliament shall be examined in the following chapters.

1.1.3 The practical implications

In the period preceding the transformation of the mere idea of shared European identity into legal and consequently factual reality of European citizenship, residents of the European Communities have been benefitting from the provisions on freedom of movement as one of the EEC Treaty cornerstones. These have been established for the sake of enhancing mutual economic cooperation amongst the Member States in order to provide for smooth trans-border motion of their economically active nationals. An important step towards shaping a genuine connection of the Member States nationals with the European Communities at that time, the concept of “passport union” has been introduced in 1981, entailing the adoption of uniform passport format in all Member States and harmonisation of the rules concerning aliens. Apart from mere standardisation of the travel documents across the European integration area, the first passports of typical burgundy colour have become a real symbol of the European identity,⁷¹ confirming thereby existence of the Community as an entity *vis-à-vis* the rest of the world and reviving the feeling of belonging to that entity “in the hearts” of the Member States’ nationals.⁷² Nowadays, the same kind of appeal to the public might be resembled with the unified blue European Health Insurance Card, another practical symbol of one’s national allegiance to some of the Member State of the European Union.

Any discourse about practical implications of the European citizenship unfolds once again from understanding of the very concept of this status, which in other words follows the question of its “fundamental” nature for the Member States nationals, and subsequent issue of a direct applicability of the rights stemming from this status in particular.⁷³ With regard to the judgements of the Court of Justice in the Baumbast⁷⁴ and Chen⁷⁵ cases, the right to reside and move freely within the European Union regardless of existence of a linkage to some economic activity within the Union - even though subjected to proportionate limitations and conditions set by the Member States - is directly applicable, which means that it can be invoked by European citizens before national courts of any of the Member States.⁷⁶ Following the Court's jurisprudence in this regard, the European citizenship has become a genuine source of the

⁶⁸ Article 10 par. 4; Article 35

⁶⁹ Article 15 par. 3 (widened the scope of the access to documents at all of the Union’s institutions, bodies, offices and agencies), Articles 20 – 24, Article 227, 228

⁷⁰ TEU, Article 11 par. 4

⁷¹ Civitas EU Facts, ‘European Union Citizenship’ (Civitas, 2011) <<http://www.civitas.org.uk/eufacts/OS/CIT1.htm> > accessed 11 March 2012

⁷² Theodora Kostakoupulou, *Citizenship, identity and immigration in the European Union – Between past and future* (Manchester University Press 2009) 46

⁷³ Paul Graig and Grainne de Burca, *EU Law: Text, Cases and Materials* (5th edn, Oxford University Press 2011) 820-821

⁷⁴ Case C-413/99 Baumbast [2002] ECR I-07091

⁷⁵ Case C-200/02 Zhu and Chen [2004] ECR I-9925

⁷⁶ Paul Graig and Grainne de Burca, *EU Law: Text, Cases and Materials* (5th edn, Oxford University Press 2011) 826

right to free movement within the Union, and has thereby enhanced the rights of the Member States nationals in rather significant manner.⁷⁷

The political rights of European citizens enable them to put into effect active and passive electoral entitlements while being located in any host Member State under non-discriminatory conditions. Even though the rates of use of this possibility might be still relatively low, just the sole existence of this opportunity shall be praised as contributing to European political awareness and enhancing the overall mobility of European citizenry. Moreover – as Graig and de Burca have observed – the project of European citizenship is not only about “narrowly defined Treaty provisions on citizenship, but other aspects of transnational civic engagement within the EU” as well, ‘providing a broader perspective on how EU citizens are constituted as members having a stake in the EU as a political entity.’⁷⁸ Accordingly, the options provided for European citizens in the Treaty of Lisbon by the way of their representation in the European Parliament and institutes related to its functioning shall be analysed in the following sub-chapters.

1.2 The European Parliament as a “guardian” of the rights of European citizens

1.2.1 The ideological and legal background

The importance of the European Parliament for exercise of the rights of European citizens is essential, both in a symbolic as well as in actual way. Firstly, the body of the European Parliament has been present alongside the whole process of evolution of European citizenship, whereby it has been contributing continually to construction of a united - meaning European identity within European integration project as such. The elementary role of the representative of the peoples of the Member States, which was initially assigned to the Common Assembly,⁷⁹ has played an instrumental role in establishing of the link between the European Communities and further on the European Union and the nationals of their Member States. In this sense the European Parliament has assumed amongst the other institutions of European integration project the position of an “arena” giving the necessary room to expression of the Union citizens’ point of view. This shall be realized by the way of deliberation of their (citizens’) direct representatives on issues of European concern in the Parliament’s plenary, building upon the reports prepared in specialised Parliamentary Committees.⁸⁰

As excerpted from the factsheet of the European Parliament:

The European Parliament has always wanted to endow the institution of EU citizenship with comprehensive rights. It advocated the determination of EU citizenship on an autonomous (Community) basis, so that EU citizens would have an independent status. In addition, from the start it advocated the incorporation of fundamental and human rights into primary law and called for EU citizens to be entitled to bring proceedings before the Court of Justice when those were violated by EU institutions or a Member State (resolution of 21 November 2001).⁸¹

⁷⁷ European Commission, ‘EU Citizenship Report 2010 – Dismantling the obstacles to EU citizens’ rights’ (European Commission, COM(2010) 603 final) <http://ec.europa.eu/justice/citizen/files/com_2010_603_en.pdf > accessed 1 April 2012

⁷⁸ Paul Graig and Grainne de Burca, *EU Law: Text, Cases and Materials* (5th edn, Oxford University Press 2011) 852

⁷⁹ ECSC Treaty, Article 20

⁸⁰ European Parliament, ‘Powers and functions’ (European Parliament/About Parliament, 2012) <<http://www.europarl.europa.eu/aboutparliament/en/0076b966cf/Powers-and-functions.html> > accessed 1 April 2012

⁸¹ European Parliament, ‘The citizens of the Union and their rights’ (European Parliament, 2011) <http://www.europarl.europa.eu/ftu/pdf/en/FTU_2.2.pdf > accessed 1 April 2012

Yet in the period preceding legal grounding of European citizenship in the Treaty of Maastricht, the European Parliament had criticised the lack of political rights of Member States' nationals and was therefore urging the Commission to present a legislative proposal in order to grant them electoral rights in a Member State of their residence.⁸² In 1989 the Parliament adopted the Declaration on Fundamental Rights and Freedoms, which gave another impetus to the idea of the rights of the Member States citizens.⁸³ After eventual 'constitutionalization' of the European citizenship in 1992, the powers of the European Parliament have been increased, and its role in invigoration the European citizenship thereby.

The Parliament has acknowledged the essential importance of its existence and operation for the sake of the Union citizens' benefit in number of its resolutions. Accordingly, it stated that it falls under its domain to provide an impetus for ensuring that the Union represents an area of freedom and democracy, based on the principles of upgrading the rights accorded to European citizens, reinforcing the rights of minorities and determining the most appropriate procedures and instruments for the implementation of such rights. Moreover, the European Parliament has been urging for strengthening the stake of European citizens in formulating common choices within the Union⁸⁴ as well as calling for practical measures taken on the side of the Union, in particular in the spheres with direct and significant impact on everyday life of the citizens, such as economic, social and environmental protection policy, in the aim to achieve a greater support of the citizens for European integration project.

The Treaty of Lisbon, devoted to the aim of constructing an "ever closer Union"⁸⁵ has built upon its legal predecessors in a way it enshrined the *acquis* accumulated by the previous Treaties, while adding new provisions with implications for the rights of European citizens. Perspective of EU citizens has been reaffirmed in a symbolical manner by the introduction of a new wording enshrined in the Treaty whereby the members of the European Parliament have been denoted as the "representatives of the Union's citizens"⁸⁶ instead of the "representatives of the peoples of the States brought together in the Community"⁸⁷, which was in use beforehand. In addition, the Treaty of Lisbon norm⁸⁸ designating the European Union to be a representative democracy certainly has a potential to strengthen the role of the European Parliament within institutional set-up of the Union, which could have eventually positive implications for European citizens' interests represented by means of the Parliament.⁸⁹

With regard to the Charter of Fundamental Rights of the European Union, which has been given binding legal character by entering of the Treaty of Lisbon into force, the European Parliament shall in all its activities fully respect fundamental rights as laid down thereby.⁹⁰ It shall also fully respect the rights and principles enshrined in the provision of

⁸² Theodora Kostakoupulou, *Citizenship, identity and immigration in the European Union – Between past and future* (Manchester University Press 2009) 47

⁸³ *ibid* 53

⁸⁴ European Parliament, 'Resolution on strengthening the Union's institutions with a view to establishing an area of democracy and liberty' (European Parliament, OJ C 150 , 28/05/1999 P. 0359) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51999IP0034:EN:HTML> > accessed 8 April 2012 B

⁸⁵ TEU, Preamble

⁸⁶ TEU, Article 14 par. 2

⁸⁷ Consolidated version of the Treaty establishing the European Community OJ C 321 E/37, Article 189

⁸⁸ TEU, Article 10

⁸⁹ Gianni Bonvicini ed., 'Democracy in the EU and the Role of the European Parliament – A Study and A Call' (Istituto Affari Internazionali, 2009) <

http://www.iai.it/pdf/Quaderni/Quaderni_E_14.pdf > accessed 10 April 2012 17

⁹⁰ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 36

Article 2, 6 par. 2 and 3 of the Treaty on European Union,⁹¹ which entails it to be tied up to the values of respect of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States. In case of breaching the above mentioned fundamental principles by some of the Member States, the European Parliament is authorized to propose and give its consent in a procedure of determination of such a breach,⁹² by employing the responsible Committee.⁹³ Last but not least, where the Parliament holds the opinion that a legislative proposal or its parts do not comply with the rights enshrined in the Charter of Fundamental Rights of the European Union, this matter shall be referred to the Committee responsible for the interpretation of the Charter, which shall deliver an opinion back to the Committee responsible for the subject-matter.⁹⁴ With regard to aforesaid it is obvious that the European Parliament has at its disposal certain powers to be utilized in pursuit of effective protection of the rights of the European citizens as well as to ensure a potential prevention in case of the threat of a breach of such rights.

1.2.2 The electoral rights of European citizens

According to the Treaty of Lisbon,⁹⁵ functioning of the European Union shall be founded on the principle of representative democracy. Taking into consideration the two levels of democratic representation existing within the Union, that is the European level and the level of the Member States,⁹⁶ the former is represented by the body of the European Parliament, as the only European institution directly elected by European citizens.⁹⁷ The main significance of the political, and, more concretely, electoral rights of the European citizens is to guarantee a non-discriminatory access of the Member States' nationals residing in a Member State different to that of their nationality, to the elections to the European Parliament, both what concerns the active (i.e. the right to vote) and passive (i.e. the right to stand as a candidate) manner.⁹⁸

An introduction of special electoral rights with the birth of the European Union has been important for the deepening of European integration project as such, since they symbolically represent an emergence of the European Union as a genuine political community and mark its encroachment into the areas traditionally reserved for the state sovereigns.⁹⁹ The possibility to vote or to stand as a candidate in the European Parliament elections in a non-discriminatory manner appeals to be relatively small in number, but in meaning quite significant part of Union citizens. According to Jo Shaw, the figure of 1,5 percent represents relatively stable portion of European citizens residing in the Member State different from the one of their nationality, to whom the electoral rights might be of direct concern.¹⁰⁰ Nevertheless, the amount of political gravity of the sole existence of these rights for a consistency of the Union's allegiance to the rule of law is enumerable. Obviously, if one of the aims of the European Union is to *'offer its citizens an area of freedom, security and justice*

⁹¹ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 36

⁹² TEU, Article 7 par. 1

⁹³ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 74e

⁹⁴ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 36

⁹⁵ TEU, Article 10 par.1

⁹⁶ TEU, Article 10 par. 2

⁹⁷ TEU, Article 12 par. 3 in combination with TFEU, Article 20 par. 2 b)

⁹⁸ TFEU, Article 20 par. 2 b)

⁹⁹ Jo Shaw, 'E.U. Citizenship and Political Rights in an Evolving European Union' (2007), 75 Fordham L. Rev. 2549 <<http://ir.lawnet.fordham.edu/flr/vol75/iss5/13>> accessed 2 April 2012 2552

¹⁰⁰ *ibid*

*without internal frontiers, in which the free movement of persons is ensured (...)*¹⁰¹ and thereby to promote the mobility of its citizens within internal frontiers, it comes only as a logical and necessary corollary, that an entity based on democratic principles shall ensure that the factual use of the rights of the citizens would not be disrupted.

Since the main focus of this thesis is on the linkage between the European Parliament and European citizenship, the lack of possibility to vote in general national and regional elections, which affects the Union citizens residing in a Member States different from that of their nationality, will be left out at this point. Nevertheless, it should be at least noted, that this fact does not show any good in regard of the Union's attempt to combat discrimination amongst the Member State nationals. As Heather Lardy points out, '(the) denial of full voting rights to European Union citizens effectively creates within each Member State two sub-groups of European citizens: those who happen to be national citizens of that state, and those who are not.'¹⁰² This remark clearly shows that from a certain point of view actual existence of inequality in rights amongst some of the European citizens can still be traced in the Union. It is also fairly obvious that the Member States have not been prepared for such a significant surrender of their sovereignty as the "Europeanization", meaning admitting intervention of the Union into their national elections procedures in the first place and also the regional ones, would be.

What concerns the practical implications of electoral rights in the European Parliament elections, there are several impediments in regards with the full utilization of their potential. Firstly, these rights are somewhat restricted in their very nature since their operation is carried out in the realm of the Member States, that are responsible for their implementation and practical application at a national, regional and often local level, by the way of employment of respective authorities,¹⁰³ which entails them in fact dependent on the performance of a Member State in particular. Moreover, certain clearance to derogate from performance of these rights is at the disposal of a Member State, where residing non-national European citizens form more than 20 % of overall electorate, which may impose restrictions regarding a minimal necessary period of residence for that matter.¹⁰⁴

The other issue is the lack of information felt on the side of European citizens as regards their rights stemming from the Union citizenship status,¹⁰⁵ which may contribute to weaker exercise of electoral rights as well. However, the most problematic concern when it comes to the European Parliament elections is perhaps their reputation of a "second-class" political matter amongst the eligible voters. According to Brendan Donnelly and Mathias Joop, "(European Parliament) elections are unfortunately either perceived by citizens as politically irrelevant, or e.g. as an opportunity to punish the own national government for social, economic or whatever reasons. Up to now, (European Parliament) elections are obviously not primarily associated with European politics or even Europe as a whole."¹⁰⁶ One of the

¹⁰¹ TEU, Article 3 par. 2

¹⁰² Jo Shaw, 'E.U. Citizenship and Political Rights in an Evolving European Union' (2007), 75 Fordham L. Rev. 2549 <<http://ir.lawnet.fordham.edu/flr/vol75/iss5/13>> accessed 2 April 2012 2561

¹⁰³ *ibid* 2552

¹⁰⁴ Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals [1993] OJ L 329, Article 14

¹⁰⁵ Commission of the European Communities, 'Report from the Commission – Fifth Report on Citizenship of the Union (1 May 2004 – 30 June 2007)' (Commission of the European Communities, COM(2008) 85 final) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0085:FIN:EN:PDF>> accessed 11 April 2012

¹⁰⁶ Gianni Bonvicini ed., 'Democracy in the EU and the Role of the European Parliament – A Study and A Call' (Istituto Affari Internazionali, 2009) <http://www.iai.it/pdf/Quaderni/Quaderni_E_14.pdf> accessed 10 April 2012 24

conceivable reasons behind the considerably low profile and still decreasing turnout¹⁰⁷ of European elections was perhaps missing direct link between the results of the elections and putting together an executive body – the Commission, as it is a standard practice in domestic political systems of the Member States while forming a government.

Accordingly, the Treaty of Lisbon has marked an important step further in this direction by introduction of a new power for the European Parliament to elect the President of the Commission,¹⁰⁸ taking into account elections to the European Parliament.¹⁰⁹ As Donnelly and Jopp conclude in this regard, ‘the potential link between the European Elections and the identity of the President of the Commission is, however, one of the very few tools which the European Parliament has at its disposal to give meaning and profile to the European Elections.’¹¹⁰ Moreover, the European Parliament is present in the process of appointing the Commission, as far as the nominees for the prospective College are expected to appear before the appropriate Parliamentary Committees for the purpose of hearing and finally the vote is taken on a confirmation of the Commission.¹¹¹ Political accountability of the Commission towards the European citizens via means of the powers of the European Parliament should not be exhausted by choosing the President and verification of qualifications of prospective Commissioners solely, but the room of Parliamentary hearings shall be dedicated to thorough examination of the program of concrete actions to be taken during their mandate.¹¹² As far as the Commission, as a body, is responsible to the European Parliament,¹¹³ the “threat” of motion of censure power and its actual use as a last resort option shall be employed if and when necessary,¹¹⁴ enforcing the Commission to resign in its very consequences.

1.2.3 European citizens’ initiative

When dealing with the invigorating of the European citizenship and related powers of the European Parliament under the Treaty of Lisbon auspices, a brief overview of the brain new institute named “European citizens’ initiative” introduced thereby cannot be left aside. Following the wording of the Treaty on European Union,¹¹⁵ a minimum of one million European citizens from significant number of Member States may take an initiative to invite the Commission to submit a legislative proposal on matters of citizens’ concern. According to the European Parliament Vice-President in charge of the citizens’ initiative Georgios Papastamkos:

The establishment of the European Citizens' Initiative (‘ECI’) constitutes an innovative participatory instrument of the EU. It certainly raises the expectations of European public opinion, but it could have an unpredictable impact on EU rule making. The ECI will help to create a 'European public sphere' in

¹⁰⁷ General turnout in the European parliament elections reached 43 % in comparison to 45% in 2004 elections, European Commission, ‘Report on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC)’ (European Commission, COM(2010) 605 final)<
http://ec.europa.eu/justice/citizen/files/com_2010_605_en.pdf>accessed 12 April 2012 4

¹⁰⁸ TEU, Article 14 par. 1

¹⁰⁹ TEU, Article 17 par. 7

¹¹⁰ Gianni Bonvicini ed., ‘Democracy in the EU and the Role of the European Parliament – A Study and A Call’ (Istituto Affari Internazionali, 2009)<
http://www.iai.it/pdf/Quaderni/Quaderni_E_14.pdf>accessed 10 April 2012, p. 32

¹¹¹ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 106

¹¹² Gianni Bonvicini ed., ‘Democracy in the EU and the Role of the European Parliament – A Study and A Call’ (Istituto Affari Internazionali, 2009)<
http://www.iai.it/pdf/Quaderni/Quaderni_E_14.pdf>accessed 10 April 2012 18

¹¹³ TEU, Article 17 par. 8

¹¹⁴ *ibid*

¹¹⁵ TEU, Article 11 par. 4

which the EU can be built from the bottom up. The European Parliament's substantial contribution to shaping ECI participation rules made it friendlier, simpler and less bureaucratic for EU citizens.¹¹⁶

These words suggest themselves to mark the next step towards taking a benefit from the Union citizenship status, whose reinforcement has been presupposed by the Treaty of Lisbon by providing for the right of European citizens to participate in democratic life of the Union.¹¹⁷ Nevertheless, quite a lot of conditions must be met for an initiative to be capable of putting into motion, as follows from the corresponding regulation.¹¹⁸

First of all, the prospective initiative must fall in an area where the Commission has the power to act. Organisers must be old enough to be eligible to vote in elections to the European Parliament and they shall form a committee consisting of at least 7 persons, residing in different Member States. The proposed initiative must be registered with the Commission before the actual collection of signatures for support of the initiative amongst the European citizens may be initiated, whereas the signatories of the initiative must come from at least one quarter of Member States, reaching at the same time the minimum number of voters set for each Member State in particular. The organisers shall be given an opportunity to be heard in public by the European Parliament. Successful initiative, i.e. the one with verified signatures can be submitted to the Commission which will have 3 months to decide whether or not to act on the subject-matter of the proposed initiative. The European citizens' initiative has officially entered into force as of the 1 April 2012. It shall complement the powers of the European Parliament as a tool of participatory democracy and bring the European citizens on par with European institutions in regard of putting forward a legislative proposal.¹¹⁹

1.2.4 The right of petition to the European Parliament and the European Ombudsman

Petitioning belongs to the institutes with an ancient tradition by means of which the sovereign is appealed to take an action for the protection of those affected by abuse of power by the agents of power or a sovereign itself. Following the transfer of sovereignty to the people and establishing the parliamentary assemblies, petitions have started to be addressed accordingly to the national parliaments. Since the Common Assembly, established within the European Coal and Steel Community, considered itself to be a proper parliamentary institution, it comes as a natural fact that it has assumed the competence to receive complaints from the citizens of its Member States.¹²⁰ This power has been preserved by the European Parliament under the Treaty of Lisbon in form of the right to petition.¹²¹

The right to petition entitles any citizen of the European Union to address either individually or in association with other citizens a petition to the European Parliament on a matter which comes within the European Union's fields of activity and which affects him, her or it directly.¹²² Petitions that are considered admissible shall be examined consequently by

¹¹⁶ European Parliament, 'European Citizens' Initiative starts on 1 April' (European Parliament - General Constitutional affairs / Citizens' rights, 2012) <<http://www.europarl.europa.eu/news/sk/pressroom/content/20120330IPR42289/html/European-Citizens%27-Initiative-starts-on-1-April> > accessed 13 April 2012

¹¹⁷ TEU, Article 10 par. 3

¹¹⁸ Regulation (EU) No 211/2011 of the European parliament and of the Council of 16 February 2011 on the citizens' initiative [2010] OJ C 267

¹¹⁹ EPP Group in the European Parliament, 'European Citizens' Initiative - Enabling EU citizens to take part in shaping EU policies' (EPP Group in the European Parliament, 2012) <http://www.eppgroup.eu/infocus/citizen_initiative_120402_en.asp > accessed 13 April 2012

¹²⁰ Franco Piodi, 'The citizens' appeal to the European Parliament' (European Parliament – Archive and documentation centre, 2009) <http://www.europarl.europa.eu/pdf/cardoc/citoyens_EN.pdf > accessed 13 April 2012

¹²¹ TFEU, Article 24 par. 2

¹²² Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), rule 201

the Parliamentary Committee in charge (“Committee on Petitions”, hereafter referred as a “Committee”) which may decide to draw up an own-initiative report on it or to submit a short motion for a resolution to the Parliament. This Committee may request opinions also from other Committees that have specific responsibility for the issue under consideration. Moreover, this Committee may request assistance from the Commission particularly in the form of information on the application of, or compliance with, Union law and information or documents relevant to the petition. For the purpose of examination of the petition the responsible Committee may organise fact-finding visits to the Member State or region concerned by the petition. In the end of the examination process the Committee shall deliberate on its findings and report to the Parliament on its conclusions. Moreover, it may ask the President of the Parliament to forward its opinion or recommendation to the Commission, the Council or the Member State authority concerned for action or response and, accordingly, it shall inform the Parliament of the measures which have been taken by the Council or the Commission on petitions referred to them.¹²³

Another type of non-judicial surveillance over public administration is an institution that has origins in Swedish legal system, which gave it a name “Ombudsman”. This institution functions as a “public defender of rights” whose mission is to provide protection to citizens from abusive bureaucratic practices.¹²⁴ With progressing of European integration project and following the introduction of European citizenship in 1992, an idea of establishing of body of Ombudsman for the European Union, which was facing heavy criticism regarding over-bureaucratization and remoteness its operation already, emerged. Since gaining the support of European citizens was crucial for successful deepening of European integration and approval of prospective enlargement, designation of European Ombudsman could be understood as a kind of “trade-off” in regard of providing for greater transparency and democratic accountability within the Union. The European Ombudsman has been thereby introduced as an institution competent to safeguard European citizens' political, civil and social rights *vis-à-vis* the cases of maladministration caused by the Union institutions.¹²⁵

According to the Treaty of Lisbon, every citizen of the Union has the right to appeal to the European Ombudsman¹²⁶ with a complaint concerning maladministration in the activities of the institutions of the Union, its bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.¹²⁷ Nature of this body within the institutional set-up of the Union is somewhat hybrid, as Paul Maignette argues: ‘On the one hand, it is formally a parliamentary body, designed to strengthen the control of EU institutions and administrations by MEPs (i.e. Members of the European Parliament); on the other hand, the profile and role of this organ is close to that of a court.’¹²⁸ One can agree with him, especially concerning the note on “parliamentary” nature of this body. Indeed, the institution of the European Ombudsman is very closely linked with the European Parliament. First of all,

¹²³ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012, rule 202

¹²⁴ Epaminondas Marias, ‘The European Ombudsman’ (1994) (1):pp.1-6. [Working Paper] EIPAScope <http://aei.pitt.edu/6396/1/Scop94_1_1.pdf>accessed 15 April 2012 1

¹²⁵ *ibid*

¹²⁶ TFEU, Article 24 par. 3

¹²⁷ TFEU, Article 228 par. 1

¹²⁸ Author further explains, that: ‘the Ombudsman is formally a parliamentary body, designed to strengthen the control of EU institutions and administrations by Members of the European Parliament (MEPs); it illustrates a classic logic of parliamentary accountability. On the other hand, the profile and role of this organ is close to that of a Court. It is addressed by individual complainants and it defines and applies ‘general principles’ to solve the cases submitted to it; as such, it is one of the organs designed to guarantee the respect of the rule of law.’ In Paul Maignette, ‘Between parliamentary control and the rule of law: the political role of the Ombudsman in the European Union’ (2011) 10:5, 677-694 *Journal of European Public Policy* <<http://dx.doi.org/10.1080/1350176032000124032>>accessed 15 April 2012 677-678

the designation of the Ombudsman into his/her office is held by election by the Parliament, which follows the regular elections to the Parliament.¹²⁹ The power of designation is mirrored by the power to request a resignation if the Ombudsman no longer fulfils conditions set for the performance of his/her duties or if he/she is found guilty of serious misconducts in the office.¹³⁰ Even though the Ombudsman shall be completely independent in the performance of the duties, adoption of the rules governing the operation of its office is again in competence of the European Parliament.¹³¹

What concerns the very action and procedures arising from the Ombudsman's mission, he/she is entitled to conduct inquiries on the base of complaints submitted to him/her directly or via Member of the European Parliament, but also on his/hers own initiative. During the inquiries the Ombudsman may ask for assistance from the Member States when appropriate, and inform the European Parliament in case that such assistance is not provided.¹³² In the case that alleged maladministration proves to be well-founded, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint and forward a report on the issue of concern to the European Parliament as well as to the Union institution, body, office or agency concerned accordingly.¹³³ Moreover, an annual report shall be submitted to the Parliament by the Ombudsman on the outcome of his/her inquiries.¹³⁴ The close link existing between the European Parliament and the European Ombudsman in a way which Magnette denotes a "communicating vessels" is to ensure that the he/she will not collide in exercising the competences with a work of the Parliamentary Committee on Petitions, as a matter of fact.¹³⁵

¹²⁹ TFEU, Article 228 par 2

¹³⁰ TFEU, Article 228 par 2

¹³¹ TFEU, Article 228 par. 4

¹³² Decision 94/262 on the regulations and general conditions governing the performance of the Ombudsman's duties as amended by European Parliament Decision 2008/587 of 18 June [2008]OJ L 189, (hereafter 'Statute of the European Ombudsman'), Article 3 par. 4

¹³³ Statute of the European Ombudsman, Article 3 par. 4

¹³⁴ TFEU, Article 228 par. 1 TFEU

¹³⁵ Paul Magnette, 'Between parliamentary control and the rule of law: the political role of the Ombudsman in the European Union' (2011) 10:5, 677-694 *Journal of European Public Policy* <<http://dx.doi.org/10.1080/1350176032000124032>> accessed 15 April 2012 680-681

2. The European Parliament and its role in combating the EU's democratic deficit

The aim of this chapter is to introduce the question of democratic deficit of the European Union and depict the possibilities of the European Parliament to ameliorate this situation. The role of the Parliament in this regard is analyzed along the powers which are on its disposal under the Treaty of Lisbon, i.e. legislative, supervisory and budgetary powers.

2.1 The EU's democratic deficit

The democratic deficit of the European Union is a frequently discussed topic. A common definition of this phenomenon, as Piotr Tosiek stated, is an existence of:

a limited influence of the addressees of decisions taken by EU governing bodies on the contents of those decisions. The reason for a deficit is a transfer of decision-making centre from state to the Community/Union level without creating a supplementary mechanism that could offer the citizens possibility of participation and control of EU institutions. The convergence of the EU and the state systems does not remove the deficit. Moreover, the democratic deficit is a two-level phenomenon. It appears at the level of the Community/Union and at the level of member states.¹³⁶

Tosiek continues with further explanation of the Community/Union level of the democratic deficit as characterized by two further elements; institutional deficit and participation deficit. According to him, institutional deficit is an outcome of the institutional division of powers that prefers organs appointed without direct influence of citizens (i.e. the Council and the Commission). Participation deficit then reflects lack of active participation of European citizens which results from the size of the EU polity, reducing thus the possibility of real political discourse.¹³⁷ Nicoleta Lasan adds to this picture another, socio-psychological dimension. This is to say that transfer of national competences to the Union institutions has not led to corresponding increase of accountability, transparency and simplification from their side. As a consequence it is rather problematic for European citizens to identify themselves with the Union and so bestow its action with democratic legitimacy.¹³⁸

Bringing a bit more general perspective, from the point of view of political science as well as the public international law, the traditional arrangement of an international organisation is based on inter-governmental cooperation. An organisation of this type is encompassing thereby the right of veto of each of its Member States, which ensures that a balance between *input* and *output* political legitimacy will be secured in the process of internal decision-making. Distinguishing between *input* and *output* political legitimacy is supposed to be used as a conceptual theoretical tool for the purpose of explaining a factual situation. According to Fritz W. Scharp in this regard:

Input-oriented legitimacy emphasises the condition of 'government by the people' which stipulates that political choices are complied with and hence considered legitimate "if and because they reflect the 'will of the people' – that is, if they can be derived from the authentic preferences of the members of a

¹³⁶ Piotr Tosiek, 'The European Union after the Treaty of Lisbon – Still and Intergovernmental System' (John Hopkins School of Advanced International Studies, 2010) <<http://www.jhubc.it/ecpr-riga/virtualpaperroom/072.pdf>> accessed 10 May 2012 4

¹³⁷ *ibid*

¹³⁸ Nicoleta Lasan, 'How far can the European Parliament correct the European Union's democratic deficit?' (2008) 8:4, 18-26 Romanian Journal of European Affairs <http://www.ier.ro/documente/rjea_vol8_no4/RJEA_Vol8_No4_How_Far_Can_the_European_Parliament_Correct_the_European_Unions_Democratic_Deficit.pdf> accessed 10 May 2012 20

community”, while *output*-oriented legitimacy emphasises the condition of ‘government for the people’ which defines that political choices are complied with and hence considered legitimate “if and because they effectively promote the common welfare of the constituency in question.”¹³⁹

In realities of standard international organisation the equilibrium should be set between quality of the goals to be pursued by the organisation (i.e. *input* dimension of political legitimacy) and suitability of the means used for their accomplishment by the organisation (i.e. *output* dimension of political legitimacy), mirrored by decisions adopted within the organisation for that purpose. Standard, meaning inter-governmental international organisation, encompasses on the both sides of the pursuit of political legitimacy its member-states. By means of their democratically elected governments the Member States are imaginary bearers of the “will of the(ir) people” on the one hand (*input* side of political legitimacy). On the other hand, Member States, being the holders of a veto power in decision-making process of the organisation, provide the “government for the(ir) people” in a way how they guarantee to block adoption of the means which would be by their population considered as inappropriate (*output* side of political legitimacy).

Nonetheless, the above mentioned formula, once taken and applied as such in the context of an organisation with supranational character, such as the European Union, cannot but indicate lack of political legitimacy as a result. First of all, the European Union is an institution *sui generis*, thereby often characterized as a complex “mixed polity”. It contains standard inter-governmental as well as certain supranational elements,¹⁴⁰ therefore it is rather troublesome to exercise the same test of democratic legitimacy in its realities as would be correct in the case of a nation-state. Nevertheless, with deepening and widening of the European Communities, which have been subsequently taken over by the European Union, it comes as a natural fact that the Union cannot get away from a certain degree of examination, whether its functioning meets at least some democratic requirements.

Debate about legitimacy in the European Union, or perhaps it is better to say about the lack of it, is focusing primarily on the European Parliament. Since the Parliament is the only Union institution directly elected by the European citizens, it logically evinces the most potential to bear the burden of democratic legitimacy being the only body truly accountable to “European demos”. From this point of view, enhancing powers of the European Parliament seems a suitable solution towards gaining more democratic legitimacy within the Union.¹⁴¹ Yet, there are also academic opinions searching for other sources of legitimacy, such as that of Marcus Horeth, arguing for more *output* side of legitimacy, i.e. the EU’s general efficiency dealing with common problems and - rather classical - indirect form of legitimacy, stemming from the Member States, backed thereby by the democratic control provided by their national parliamentary bodies.¹⁴²

The problem of democratic deficit at European level has escalated with adoption of the Treaty of Maastricht, which marked significant “Europeanization” of policy-making in the areas, which used to previously belong under sovereignty of the Member States. Since the institutional set-up at that time proved to be unsatisfactorily democratic and the operation of the Union has become throughout time more and more complex and thereby too remote to

¹³⁹ Berthold Rittberger, ‘Removing conceptual blinders: Under what conditions does the ‘democratic deficit’ affect institutional design decisions?’ (2003) 5 Constitutionalism Web-Papers, ConWEB <<http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/ConWEBFiles/Fileupload,38342,en.pdf>> accessed 20 February 2012 4

¹⁴⁰ Marcus Horeth, ‘No way out for the beast? The unsolved legitimacy problem of European governance’ (1999) 6:2, 249-268 *Journal of European Public Policy* <<http://www.tandfonline.com/doi/pdf/10.1080/135017699343702>> accessed 15 April 2012 252

¹⁴¹ *ibid* 250

¹⁴² *ibid* 251

European citizens, serious consideration of present situation was inevitable.¹⁴³ One of the main issues to deal with in post-Maastricht era was therefore a reconsideration of the role of the European Parliament amongst the other institutions of the European Union. For the sake of higher democratic legitimacy it was important to turn the Parliament into a body with real impact on internal decision-making, in the realm of which debate on politically important matters can occur.¹⁴⁴ Accordingly, in order to counterweigh gravity of the executive, i.e. position of the Council and the Commission within Union's policy-making, the European Parliament was about to have a real stake in legislative procedure, from power to introduce a legislative proposal to essential competences in enacting process, as well as having political control over executive and approving of an annual budget of the Union. The overview and brief analysis of these powers under the Treaty of Lisbon shall be the subject of following sub-chapters.

2.2 The supervisory powers of the European Parliament

The European Parliament in its relations with the other two institutions creating an institutional triangle of the EU, namely the European Commission and the Council, abounds in competences to exercise various kinds of democratic control over their functioning, as well as the competences to take part in their operation to a certain extent. Having in mind the Parliament's general mission in regard of lending democratic legitimacy to the European Union and combating herewith its democratic deficit, efficiency of Parliament's operation as well as its political gravity as such is a crucial factor in heading towards more democratic and "citizen-friendly" Union.

2.2.1 The power of appointment and motion of censure on the Commission

One of the characteristic attributes of the national parliaments of EU Member States is the authorization of political executives, in order to enable executive to derive legitimacy and authority from the bodies directly representing the people,¹⁴⁵ and the same principle has been reproduced and applied within the Union institutional system. The power of the European Parliament to have a say in establishing the Commission has developed gradually, following thus overall consolidation of Parliament's institutional position by adoption of the Treaties subsequent to the initial ones, setting-up the European integration Communities. The most significant changes have been marked by the Maastricht Treaty, which has formalized evolving practices, such as; consultation of the whole Parliament over candidate for the President of the Commission, vote of confidence in the Commission as a whole taking place before the Commission takes office, linkage of Commission's term of office to that of the Parliament, i.e. 5 years, so that the procedures for appointing the Commission would be directly and clearly linked to the European elections. Apparently, this coincidence has been chosen as an instrument facilitating parliamentary scrutiny over the Commission and enhancing thereby "the feeling" of the Commissioners that they are accountable to the Parliament.¹⁴⁶

¹⁴³ *ibid* 253

¹⁴⁴ Marcus Horeth, 'No way out for the beast? The unsolved legitimacy problem of European governance' (1999) 6:2, 249-268 *Journal of European Public Policy* <<http://www.tandfonline.com/doi/pdf/10.1080/135017699343702>> accessed 15 April 2012 253

¹⁴⁵ David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 203

¹⁴⁶ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 261-262

The Treaty of Lisbon has brought about some changes, yet not that significant breakthrough into the practices was established in this regard so far. Proposal for the President of the Commission originates in the realm of the European Council, which is explicitly bound to take an account of the result of the European elections. The European Parliament is then called to elect the President of the Commission by using a simple majority vote.¹⁴⁷ Once the candidate for President of the Commission is elected, the President of the Parliament shall inform the Council accordingly, asking it and the President-elect of the Commission to propose by a common accord the nominees for the various posts of Commissioners.¹⁴⁸ Even though the Parliament has no formal power to “weed” individual nominees to the College of Commissioners, its eventual power to give or refuse to give its consent on the Commission as a whole¹⁴⁹ could be perceived as a sufficient threat in regard of pushing for nominating Commissioners from the Member States rather carefully.¹⁵⁰

The European Parliament’s involvement in building-up the Commission is mirrored by its capacity to put the Commission down by employing motion of censure.¹⁵¹ This option represents a so-called “nuclear weapon” of the Parliament’s supervisory powers and its deployment is therefore considered rather prudently, especially since, as according to Hix, ‘the European Parliament is aware that the Commission, as a fellow supranational institution, is more often an ally against the Council than an enemy.’¹⁵² Once again, alike sole existence of the possibility of forcing governments to resign by national parliaments of the Member States, also the motion of censure in realities of the European Union is more than enough to encourage the Commissioners to “take the European Parliament” very seriously.¹⁵³

The right of dismissing the Commission belongs to the Parliament’s oldest powers¹⁵⁴, providing the Parliament with power to cast a vote on resignation of the Commission as a body.¹⁵⁵ When the motion is tabled before the Commission, a period of at least 3 days must pass until the Parliament can take a vote on the matter, whereas its approval requires double majority, meaning two-thirds majority of the votes cast, representing a majority of the members of the Parliament.¹⁵⁶ Nevertheless, the novelty brought about by the Treaty of Lisbon in the form of double-hatted (according to some even triple-hatted) function of the High Representative of the Union for Foreign Affairs and Security Policy can have serious and rather peculiar implications in the case that vote on the motion in the Parliament is successful.¹⁵⁷ Since the High Representative presides over the Foreign Affairs formation of the Council and at the same time serves as one of the Vice-Presidents of the Commission, resignation of the Commission would imply his/hers resignation from duties carried out in the Commission only.¹⁵⁸ In any case, how would that actually work in reality remains as the question for the future.

¹⁴⁷ TEU, Article 17 par. 7

¹⁴⁸ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 105

¹⁴⁹ TEU, Article 17 par. 7

¹⁵⁰ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 263

¹⁵¹ TEU, Article 17 par. 8

¹⁵² David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 210

¹⁵³ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 273

¹⁵⁴ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 272

¹⁵⁵ TFEU, Article 234

¹⁵⁶ TFEU, Article 234

¹⁵⁷ Prof. E. Lannon, Institutional Law course, Ghent University, 2011/2012

¹⁵⁸ TEU, Article 17 par. 8, TFEU Article 234

2.2.2 The oral and written questions

In the light of institutional set-up of the European Union a close cooperation of the European Parliament with executive bodies is desirable; both for the sake of fruitful collaboration on the one hand, as well as in order to indirectly confer democratic legitimacy to their operation on the other. As presupposed by the Rules of Procedure of the European Parliament, a flow of information is a crucial element contributing to the existence of a "special partnership" between the Parliament and the Commission, building thereby political responsibility and legitimacy of the Commission.¹⁵⁹ Pattern of practice of parliamentary scrutiny over executive, by obliging decision-makers in executive area to debate their decisions in the parliaments' "ground", answer the questions posed by members of the parliaments and report on their activities, has been borrowed again from the Union's Member States.

The European Parliament under the Treaty of Lisbon has at its disposal several measures to make use of in order to gain information necessary to subject European executive bodies under democratic control. First of all, Parliamentary questions may be submitted to the Council or the Commission, who should answer them accordingly, either in oral or written form, depending on the type of questioning procedure deployed by the Parliament.¹⁶⁰ These questions serve to the Parliament as a tool for obtaining precise information on particular points or to force a policy statement, regarded by the Parliament as desirable.¹⁶¹ Questions for oral answer can be tabled to the Council or the Commission in advance, followed by the sitting on respective agenda and debate in the Parliament¹⁶², or they may be answered at the Parliamentary part-session in Strasbourg, within the so-called "question time".¹⁶³ Even though the time provided for answering oral questions in front of the Parliament is very limited, symbolic value of executive representative directly facing representatives of the European electorate in the Parliament may in this case prevail.

Written questions must be answered by the relevant body within six or three weeks, depending whether the question has been marked as priority one. The practice of written questions, as Raunio points out, is effective in a way, how 'it forces the Commission to produce a reply, and members (of the European Parliament) thereby receive an official statement from the Commission which they can afterwards use for their own purposes'.¹⁶⁴ Nevertheless, institute of Parliamentary questioning is not meant to be "one-way street" only, but it can serve as an informational tool in other way around, i.e. in direction from the European Parliament towards executive bodies, in order to articulate the issues which would demand their higher attention.¹⁶⁵ Last but not least, for the sake of higher transparency the list of actual questions of all three above mentioned kinds is made public at the website of the European Parliament¹⁶⁶, which can significantly contribute to overall awareness of the European citizens regarding EU affairs.

Besides questioning of Union's executive under procedures mentioned above, the European Parliament has at its disposal also other forms of scrutinizing their operation, such

¹⁵⁹ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Annex XIV.

¹⁶⁰ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rules 115 - 117

¹⁶¹ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 27

¹⁶² Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 115

¹⁶³ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012), Rule 116

¹⁶⁴ David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 219

¹⁶⁵ *ibid*

¹⁶⁶ European Parliament, 'Parliamentary questions' (European Parliament, 2012) <<http://www.europarl.europa.eu/QP-WEB/home.jsp?language=en>> accessed April 30 202

as debating issues of relevance, either in plenary or within the Parliamentary Committees.¹⁶⁷ Moreover, practice of entering members of the Parliament into correspondence with the Commission has developed by the time as yet another option of channeling information necessary for the Parliamentary scrutiny.¹⁶⁸ The European Parliament is as well empowered to receive annual and other types of reports¹⁶⁹ from various bodies, as provided by the Treaty of Lisbon¹⁷⁰, which constitutes another informational base for its overall supervision within the Union. Amongst them, the annual general report submitted by the Commission¹⁷¹ represents a tool of significant political value since it is discussed in open session, which means that it receives a corresponding publicity.¹⁷²

2.2.3 The various types of Parliamentary committees

The day-to-day work of the European Parliament is organized on the base of standing committees, established by the Parliament¹⁷³ as the units with responsibility for certain area of the European Union's engagement. Besides these "regular" committees, occupied with adoption of draft reports and opinions in entrusted sphere for legislative and non-legislative purposes,¹⁷⁴ an option to set up committees of temporary character ("special committees") is given as well¹⁷⁵, in order to enable the Parliament to provide adequate respond to particular situation or to stimulate a desirable action on behalf of the Union. In any case, period of service of a special committee shall not exceed 12 months, unless the Parliament does not prolong the term of its operation by itself.

Another type of temporary committees, presupposed by the Treaty of Lisbon¹⁷⁶, is the Committee of Inquiry, which can be established in order to investigate alleged contraventions of Union law or alleged maladministration in the application of Union law which would appear to be the act of an institution or body of the European Union, of a public administrative body of a Member State, or of persons empowered by Union law to implement that law. As it follows from the Treaty wording, setting-up of the Committee of Inquiry presumes existence of suspicion that maladministration in regard of the Union's law application occurred, whereas it pursues the power of Parliamentary scrutiny over significantly wide range of actors involved in such implementation. A Committee of Inquiry, once established, is entitled to deploy appropriate means of investigation, including accessing

¹⁶⁷ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 276

¹⁶⁸ *ibid* 278

¹⁶⁹ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012) Rule 119

¹⁷⁰ e.g. TEU, Article 15 par. 6 d) - Report from the President of the European Council; TFEU, Article 25 TFEU – Report from the Commission on the application of provisions on non-discrimination and citizenship of the Union; TFEU, Article 121 par. 5 – Report from the Council and the Commission on the results of multilateral surveillance; TFEU, Article 159 – Report from the Commission on achievements in social policy; TFEU, Article 175 – Report from the Commission on the progress in economic, social and territorial cohesion; TFEU, Article 190 – Report from the Commission on research and technological development activities; TFEU, Article 207 – Report from the Commission on the progress of negotiations agreements with third countries in realm of common commercial policy; TFEU, Article 284 – Report from the European Central bank on its activities and on the monetary policy

¹⁷¹ TFEU, Article 233

¹⁷² Prof. E. Lannon, Institutional Law course, Ghent University, 2011/2012

¹⁷³ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012) Rule 183

¹⁷⁴ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 129

¹⁷⁵ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012) Rule 184

¹⁷⁶ TFEU, Article 226

sensitive documents and clearing officials in charge, providing that sufficient degree of confidentiality in treatment of this information will be duly observed.¹⁷⁷

The decision of the European Parliament setting-up a Committee of Inquiry must be made public as much as possible; besides the publication in the Official Journal of the European Union, the Parliament is required to take all other necessary steps that could help to make this decision widely known.¹⁷⁸ This obligation is another example of the efforts to bring the Union closer to its citizens, especially since the rationale behind the very formation of the Committee in question is to examine behaviour of the bodies responsible for application of the law of the Union, which can thus affect the position of EU citizens directly. After the Committee considers its task to be completed, it shall submit a report on the results of its investigation to the Parliament, whereas this report shall be published subsequently. The final outcome of the Committee's mission might take a form of recommendation on the issues it has dealt with, addressed to the EU institutions or other bodies applying EU law in order to deliver adequate improvements.

2.3 The legislative and constitutional-type powers of the European Parliament

2.3.1 The legislative powers of the European Parliament

The powers of the European Parliament in the sphere of legislation of the European Communities and later on the European Union have developed significantly with time. The Treaty of Rome endowed the Parliament with modest power of consultation, which entitled it to give its opinion on proposals presented by the Commission, but the final decision was taken by the Council.¹⁷⁹ By adoption of the Single European Act, the new – cooperation procedure has been introduced, giving the Parliament more power in decision-making process *vis-à-vis* the Council; possibility of two readings of the proposed legislation has emerged, with a right of the Parliament to approve, reject or amend position of the Council, yet in the end the Council could have outvoted Parliament's proposal if acting unanimously. Also the scope of application of this procedure was limited to certain areas, such as measures relating to the establishment and functioning of the common market. With adoption of the Maastricht Treaty, scope of its application has broadened to all cases where the Council was obliged to act by qualified majority. Moreover, a new procedure – “co-decision” was introduced in order to strengthen position of the Parliament within legislative process, placing therewith the Parliament on par with the Council. Nonetheless, co-decision procedure was at that time limited to 15 areas of Community activity only¹⁸⁰ and was rather cumbersome as such. Therefore the following Treaty of Amsterdam has brought about major change in this regard by significant simplification of this procedure and further widening of the scope of its application. The Nice Treaty added 5 new areas for the scope of its application and the cooperation procedure has been replaced thereby with co-decision procedure in almost all areas of the EU decision-making.¹⁸¹ Eventually, the Treaty of Lisbon has taken-over the co-

¹⁷⁷ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012) Annex VIII

¹⁷⁸ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012) Rule 185

¹⁷⁹ Centre Virtuel de la Connaissance sur l'Europe (CVCE), 'Power to legislate of the European Parliament' (CVCE, 2011) < <http://www.cvce.eu/viewer/-/content/4f35fdb4-323e-49a0-a138-5b11d701d9a3/en> > accessed 4 May 2012

¹⁸⁰ European Parliament, 'Codecision and Conciliation: A Guide to how the Parliament co-legislates under the Treaty of Lisbon' (European Parliament, 2009) < http://www.europarl.europa.eu/code/information/guide_en.pdf > accessed 4 May 2012 p. 8

¹⁸¹ Centre Virtuel de la Connaissance sur l'Europe (CVCE), 'Power to legislate of the European Parliament' (CVCE, 2011) < <http://www.cvce.eu/viewer/-/content/4f35fdb4-323e-49a0-a138-5b11d701d9a3/en> > accessed 4 May 2012

decision procedure and re-introduced it under the new denomination “ordinary legislative procedure”¹⁸², while cooperation procedure has disappeared completely.¹⁸³ In fact, ordinary legislative procedure has become thereby a standard legislative procedure, as the scope of its application has been widened significantly.

The European Parliament within ordinary legislative procedure takes an equal share of the legislative power within the Union together with the Council. The legislative procedure is based on collaboration between the Commission, who is responsible for submitting a legislative proposal¹⁸⁴, The Parliament and the Council. The Parliament shall adopt the position on the presented proposal and communicate it to the Council. Depending on the outcome of the Council’s standpoint, the act might be adopted in the first reading already, or it must proceed to the second reading.¹⁸⁵ The Parliament is empowered thereby to reject the Council’s position or propose amendments to it, which might lead to further discussion held within the Conciliation Committee, composed of the Council and Parliament representatives on equal ratio.¹⁸⁶ The task of the Conciliation Committee is to reach a joint text, on which both Council and Parliament would agree. The fact that the Parliament has even in this case still power to reject the proposed law by a majority of the votes cast¹⁸⁷ entails its position *vis-à-vis* the Council significant political and actual gravity.

What concerns the powers of the European Parliament within legislative procedures of the Union, its indirect right of legislative proposal shall be pointed out as another example of factors contributing to consolidation of the Parliament’s status amongst the other institutions taking part in legislation, and to higher democratic legitimacy of legislation herewith. Generally speaking, it is the Commission which holds the “monopoly” of legislative initiative¹⁸⁸, yet, since the Treaty of Maastricht, the Parliament is empowered to initiate a legislative proposal indirectly, by the way of requesting the Commission to submit to it a proposal on matter which it considers desirable.¹⁸⁹ Nevertheless, since the Commission is not obliged to take the Parliament’s proposal “on board”, only to justify its refusal, renders this Parliamentary power in fact conditional, and therefore rather weak.

2.3.2 The constitutional-type powers of the European Parliament

As mentioned in the previous sub-chapter, the European Parliament has assumed significant development of its status within the institutional triangle of the European Communities and the European Union respectively. Gradual emancipation of Parliament’s powers has had an impact on internal as well as external arrangements of the Communities/Union action, as it naturally follows from enhancing role of the Parliament being the body representing the peoples of the constituent Member States. Constant need for democratic legitimization of the European Communities/Union conduct has found its counterpart in introduction of the Parliamentary powers, without which any of such action – once undertaken - shall be deemed invalid. These constitutional-type powers, i.e. powers when the European Parliament is not purely legislating, but rather takes an essential part in decision-making procedure, will be analysed further on.

The right of the European Parliament to be consulted by the Council before the legislative proposal can be definitely adopted has been introduced by the Treaty of Rome.

¹⁸² TFEU, Article 294

¹⁸³ Prof. E. Lannon, Institutional Law course, Ghent University, 2011/2012

¹⁸⁴ TFEU, Article 294 par. 2

¹⁸⁵ TFEU, Article 294 par. 2

¹⁸⁶ TFEU, Article 294 par. 8, 10

¹⁸⁷ TFEU, Article 294 par. 13

¹⁸⁸ TEU, Article 17 par. 2

¹⁸⁹ TFEU, Article 225

Arguably, one could pose the question if in this case it was possible to speak about “real” power of the Parliament, since the practice introduced thereby resembled more “information-like procedure”, without any chance of the Parliament to actually influence the proposal in any substantial manner.¹⁹⁰ However, the Court of Justice in *Isoglucose*¹⁹¹ judgement strongly confirmed political gravity of consultation procedure as far as it creates the link between consultation of the Parliament and democratic character of the Community, and annulled thereby legislation adopted by the Council without prior consultation of the Parliament.¹⁹² The Court stated:

consultation (...) is the means which allows the Parliament to play an actual part in the legislative process of the Community, such power represents an essential factor in the institutional balance (...). Although limited, it reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of representative assembly.¹⁹³

Yet, in the following case-law the Court clarified that arbitrary hindering of the decision-making procedure by the Parliament, when making use of its right to be consulted, will not be acceptable, as far as the consultation procedure as such requires sincere collaboration between the Council and the Parliament.¹⁹⁴ Existence of the consultation procedure has been maintained in the course of all subsequent Treaty amendments and the Treaty of Lisbon has made use of it¹⁹⁵ mainly within the so-called “special legislative procedure”¹⁹⁶ in the number of EU domains¹⁹⁷, including the issues previously pertaining to the third pillar¹⁹⁸. Accordingly, consultation procedure gives right to the European Parliament to approve, reject or propose amendments to a legislative proposal before the Council adopts it.

Besides the “internal” dimension of consultation procedure, in the sense of consultation of the Parliament within decision-making procedures of the Union’s areas of activity oriented inwards, the views of the European Parliament shall be duly taken into consideration in the area of Common Foreign and Security Policy as well. Thus the newly introduced post of High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the Parliament on the main aspects and basic choices of this policy.¹⁹⁹ Moreover, consultation of the Parliament is an essential requirement for adoption of decision concluding agreement with a third country by the Council in prescribed cases.²⁰⁰ Apart from utilizing the consultation procedure in legislative processes, under the Lisbon Treaty it is being employed as a non-legislative tool as well. The Parliament thus must be consulted within number of appointment procedures, e.g. by appointment of the management of the European Central Bank²⁰¹, Members of the Court of Auditors²⁰² or in other prescribed cases²⁰³.

¹⁹⁰ *ibid*

¹⁹¹ Case C –138/79 *Isoglucose* [1980]

¹⁹² Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 199

¹⁹³ Case C –138/79 *Isoglucose* [1980] par. 33

¹⁹⁴ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 201

¹⁹⁵ TEU, Article 14 par. 1: ‘*The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties.*’

¹⁹⁶ TFEU, Article 289 par. 2

¹⁹⁷ TFEU, Article 21 par. 3; 22 par. 1, 2; 23; 64 par. 3; 95 par. 3; 103 par. 1; 109; 113; 115; 118; 125 par. 2; 126 par. 14; 127 par. 6; 128 par. 2; 129 par. 4; 134 par. 3; 140 par. 2; 148 par. 2; 153 par. 2; 160; 182 par. 4; 188; 192 par. 2; 194 par. 3; 203; 311

¹⁹⁸ TFEU, Article 74; 77 par. 3; 78 par. 3; 81 par. 3; 87 par. 3; 89

¹⁹⁹ TEU, Article 36, also 41 par. 3

²⁰⁰ TFEU, Article 218 par. 6 b), also TFEU, Article 219 par. 1

²⁰¹ TFEU, Article 283 par. 2

Assent, that is consent procedure, following the new wording introduced by the Lisbon Treaty, has been introduced by the Single European Act. At that time it served as a tool giving a power of veto to the European Parliament²⁰⁴ in regard of concluding accession and association agreements only. The Maastricht Treaty has expanded its use for agreements establishing a specific institutional framework or entailing modifications to an act adopted under the co-decision procedure. The Amsterdam Treaty anchored assent, i.e. consent as a necessary requirement for taking action in case of serious and persistent breach of the European Union's fundamental principles and penalties by a Member State.²⁰⁵ The Treaty of Lisbon has embraced consent procedure as developed beforehand, both for legislative²⁰⁶ and non-legislative²⁰⁷ purposes.

2.4 The budgetary powers of the European Parliament

2.4.1 The role of the European Parliament in the adoption of annual budget of the European Union

The position of the European Parliament in regard of adoption of annual budget of the European Union has changed eminently in the course of the time. Long before the European Union has been established, a replacement of national contributions system of financing the European Communities with a system of the “own resources” provoked a need to add on internal democratic control over the revenue, which has consequently led to entrusting the European Parliament (alongside the Council) with involvement in determination of the allocation of the Community expenditure.²⁰⁸ The European Parliament had the right to amend the draft budget placed before as well as reject the draft budget and ask for a new draft to be submitted to it.²⁰⁹ However, the weight of the Parliament’s say differed significantly depending on whether expenditure, upon which it was supposed to exercise its powers, was marked as compulsory or non-compulsory. Accordingly, the Parliament had final say in regard of the latter only, whereas for “compulsory expenditure” it could have only proposed modifications, but could not affect the final amount, once approved by the Council in the second reading. This distinction, assessed as political rather than as a technical one, could have served for years to “cordon off large part of the budget (most notably, the Common Agricultural Policy), and to reduce the Parliament’s power to shape that part.”²¹⁰ The attempts of the Parliament to shift the “frontiers” between the two in its favour have been all in all successful²¹¹, and with entering of the Treaty of Lisbon into force, the contested difference has vanished completely.

Besides the elimination of the “compulsory” and “non-compulsory” expenditures distinction, the Treaty of Lisbon has placed adoption of the Union’s annual budget within

²⁰² TFEU, Article 286 par. 2

²⁰³ TFEU, Article 246; 262; 308; 322 par. 2; 332; 349; TEU, Article 27 par. 3; 48 par. 3, 6

²⁰⁴ Prof. E. Lannon, Institutional Law course, Ghent University, 2011/2012

²⁰⁵ European Parliament, 'Powers' (European Parliament, 2011) <

http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.2.pdf>accessed 5 May 2012

²⁰⁶ TFEU, Article 19 par. 1; 25; 82 par. 2; 83 par. 1; 86 par. 1, 4; 223 par. 1; 311; 312 par. 2;

²⁰⁷ TEU, Article 7 par. 2, 3; 14 par. 2; 17 par. 7; 48 par 3, 7; 49; 50 par. 2, TFEU, Article 218 par. 6 a); 329 par. 1; 352 par. 1

²⁰⁸ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 240

²⁰⁹ Nice Treaty, Article 272

²¹⁰ *ibid* 251

²¹¹ Over 20 years a change from less than 20 % to more than 50 % of the non-compulsory expenditure ratio, in Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 251

newly introduced “special legislative procedure”, with the aim to simplify and make the whole process more transparent. Instead of two readings, as beforehand, there is only one reading within both the Council and the Parliament, after the Commission’s submission of its proposal of the draft budget.²¹² In any case, the European Parliament has surmounted significant shift in its powers in regard of adoption of the EU budget since it has assumed a position on par with the Council. A close cooperation between the Parliament and the Council is presupposed as the base of successful implementation of the budgetary procedure. More concretely, the European Parliament has the right to be informed by the Council about the reasons which led to its adoption of certain position on the draft-budget submitted by the Commission.²¹³ The Parliament has 42 days at its disposal to consider the position of the Council; it may approve this position or adopt amendments to it. In the case that it does not state any position to the one of the Council, the budget shall be considered adopted.²¹⁴

The amendments, suggested by the Parliament, shall be subjected to the meeting of the “Conciliation Committee”, in case that the Council has not approved on all the Parliament’s amendments in the meantime.²¹⁵ The main point of the Conciliation Committee is – as follows from its very denomination – to reconcile positions of the Parliament and the Council in regard of their differing standpoints.²¹⁶ Representation of the Parliament and the Council in the Committee is strictly equal, which again enhances the parity of these two bodies in budgetary procedures set-up by the Lisbon Treaty. The outcome of the Conciliation Committee in the form of the joint text is destined to undertake another round of the approval by the two budgetary bodies. The Parliament may employ in fact three powers; it may approve the joint text, decline to take any decision or reject the joint text. The same possibilities rest upon the Council, therefore the very outcome of the whole procedure depends on their interaction.²¹⁷ It is interesting to point out in this regard that the position of the European Parliament is in certain sense even stronger than the one of its counterpart, since the Council may never impose a budget against the will of the Parliament,²¹⁸ whereas this can make use of the option offered by TFEU, Article 314 par. 7 (d), enabling the Parliament to come back to its original amendments’ proposal and take it on board despite of the Council’s rejection. One can thus conclude that the principle of strict parity of the Council and the Parliament in the budgetary procedure is not absolutely rigid, but to some extent inclines towards the benefit of the latter.

2.4.2 The Budgetary Control Committee

The European Parliament plays a crucial role in overall control of budgetary expenditure within the Union. At the center of this power lies the right to grant a discharge to the Commission for its execution of the budget.²¹⁹ Discharge procedure is closely related to the outcome of the Court of Auditors, providing the Parliament with detailed annual report on financial management of the Union’s institutions.²²⁰ In practical terms, granting a discharge to the Commission means an adoption of the formal statement that the Parliament is satisfied with the implementation of the Union’s budget by the Commission. Together with endorsing

²¹² TFEU, Article 314 par. 2

²¹³ TFEU, Article 314 par. 3

²¹⁴ TFEU, Article 314 par. 4

²¹⁵ TFEU, Article 314 par. 4

²¹⁶ TFEU, Article 314 par. 5

²¹⁷ TFEU, Article 314 par. 7

²¹⁸ European Parliament, “The budgetary procedure”(European Parliament, 2012)<http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.4.3.pdf>accessed 3 May 2012

²¹⁹ TFEU, Article 319

²²⁰ TFEU, Article 287 par. 4, Article 319 par. 1

the Commission's management of the finances of the Union, the Parliament may make a use of discharge in order to assess existing difficulties in regard of implementation of the budget and provide respective recommendations for their improvement.²²¹ The Commission is then obliged to take due account of the observations recorded in the decisions giving it discharge as well as on the other observations by the European Parliament relating to the execution of expenditure.²²²

On the contrary, refusal to grant a discharge in fact means that the Parliament condemns the way in which the Commission has held the management of the Union's finances in the respective year, and it exercises this criticism in publicly exposed manner.²²³ Needless to say, this act has very harsh political ramifications for the Commission as such, which can be followed by the motion of censure and may thus in its very consequence lead up to the Commission's resignation. Following the consequences of refusal to grant a discharge to the Commission, one can well observe that the discharge procedure is much more a tool of "heavy weaponry" in the Parliament's "legal gear" of scrutiny over executive bodies than a procedure with merely formal character only.

The role of the European Parliament in regard of exercising overall control of budgetary expenditure pertains to the Budgetary Control Committee. This standing Committee is responsible for the implementation of the budget of the Union and decisions on discharge to be taken by the Parliament, and other task entrusted upon it.²²⁴ In practice it means that the Budgetary Control Committee is the entity within internal structure of the Parliament where the actual assessment and processing of the reports of the Court of Auditors²²⁵ and the corresponding hearings and deliberations take place. Besides adoption of decision on discharge in favour of the Commission, the Budgetary Control Committee scrutinizes number of other entities - typically EU agencies - as well. The outcome of the activities undertaken by the Budgetary Control Committee in performance of its duties is made accessible by electronic means²²⁶, which is contributive to overall awareness of the European citizens and enable them to follow this Committee's work easily.

²²¹ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 282

²²² TFEU, Article 319 par. 3

²²³ Richard Corbett, Francis Jacobs and Michael Shackleton, *The European Parliament* (6th edn, John Harper Publishing 2005) 283

²²⁴ Rules of Procedure of the European Parliament (7th Parliamentary term, 2012) Annex VII part V

²²⁵ David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 202

²²⁶ European Parliament/Committees. 'Budgetary Control' (European Parliament, 2012) <<http://www.europarl.europa.eu/committees/en/cont/home.html>> accessed 2 May 2012

Conclusion

The failed project of the “Constitution for Europe” was not the very first attempt to establish a common constitution for the European states. Yet in 1948 a draft of the “Federal Constitution of the United States of Europe” was submitted by Francois de Menthon, followed later on with a project of the “European Political Community”, eventually abandoned. Since the strategy proposed thereby proved to be too premature, Jean Monnet and Robert Schumann suggested a different concept, based on gradual integration, commencing from economic cooperation consequently leading to political union. On the way towards this goal, in 1984 a draft “Treaty establishing the European Union” was drawn up by the then European Parliament’s Committee on Institutional Affairs, proposing apart from other ideas introduction of parliamentary system with two chambers (Parliament and Council), with clearly defined powers.²²⁷ Draft also suggested that political accountability of the Commission to the Parliament should be strengthened as the choice of the President of the Commission of the College of Commissioners would require approval by the Parliament; standard way of decision-making process should have been co-decision of the Council and Parliament and division of powers between the Union and the Member States would strictly follow the principle of subsidiarity.²²⁸

From this brief enumeration it is fairly obvious that the 1984 draft proved to be very visionary. Even though it was not adopted in the end, the message the draft has left behind has been embraced in the Treaty of Lisbon. Accordingly, stimulation of the “European political conscience”, as the main idea on which the draft has been based, remained the “thin red line” till the proposal of the “Constitution for Europe”, an imaginary predecessor of the Treaty of Lisbon, has come up.²²⁹ One can notice that overall empowerment of the European Parliament has been situated as the central prerequisite for “constitutionalization” of European integration project and enhancing its democratic legitimacy herewith. Either way, the link between the European Parliament and combating alleged democratic deficit in the European Communities and then the European Union proved to be self-evident, alike the idea of rectifying this deficit by the way of shifting balance of powers between the Council and the Parliament in favor of the latter. Accordingly, there are voices claiming that the legacy of Jean Monnet’s concept of integration community, lead by powerful supranational body, entailed operation of the European Union in its very consequences too technocratic and elitist, and shall be thus overcome.²³⁰

Nonetheless, it remains rather arguable whether mere, i.e. formal empowering of the European Parliament and increasing of the Union’s democratic legitimacy are to be found in

²²⁷ Raquel Valls, ‘A Constitution for Europe? Hardly new idea!’ (2011) Centre Virtuel de la Connaissance sur l’Europe < <http://www.cvce.eu/viewer/-/content/fe4cc5b2-4dbb-448a-9b90-b61ef6304fc7/en> > accessed 8 May 2012

²²⁸ European Parliament, ‘Altiero Spinelli – European Federalist’ (European Parliament, 2009) < <http://www.europarl.europa.eu/committees/en/afco/studiesdownload.html?languageDocument=EN&file=29711> > Accessed 9 May 2012 33

²²⁹ Raquel Valls, ‘A Constitution for Europe? Hardly new idea!’ (2011) Centre Virtuel de la Connaissance sur l’Europe < <http://www.cvce.eu/viewer/-/content/fe4cc5b2-4dbb-448a-9b90-b61ef6304fc7/en> > accessed 8 May 2012

²³⁰ Kevin Featherstone, ‘Jean Monnet and the ‘Democratic Deficit’ in the European Union’ (1994) 32:2, 149-150 *Journal of Common Market Studies* < http://kie.vse.cz/wp-content/uploads/3_4.pdf > accessed 9 May 2012 150

straightforward and imminent causal relation. Taking into consideration specific character of the European Union, functioning alongside institutional triangle rather than standard duo government – parliament, one can hardly expect that relation between the Parliament, Commission and Council could work in the same manner as the one within a nation-state. Moreover, any rebalancing of the Union’s inter-institutional *status quo* necessarily has an impact on the Member States’ responsibilities and their influence within the Union as such. Since handing-over part of the national sovereignty has been undertaken for the sake of “common good” of the Member States, and so their citizens, it comes as a natural fact that these are more prone to consider Union’s operation legitimate if the outcome of its activities is perceived by them as favorable, despite of remoteness and incomprehensibility of Union’s functioning. Accordingly, the European Parliament as one of the main bodies of the European Union is capable to add to its democratic legitimacy not only formally, i.e. by its mere existence or when its powers are enhanced, but mainly when it can effectively deploy these powers for the sake of European citizens’ benefit.

Despite many changes that the European Parliament has overcome and all the competences it has gained in the course of the time, one can assume that the body still suffers from somewhat “image problem”.²³¹ This is to say that even though powers of the Parliament under the Treaty of Lisbon point to solid player within the Union’s institutional set-up, perception of the European citizens might be somewhat different. Leaving out the fact that no one can expect random EU citizen to be an expert in EU institutional matters, the European Parliament has potential (and aspirations) to be “the” body that will bring the European Union closer to its citizens. Accordingly, visibility and comprehensibility of Parliament’s action is indisputably a crucial factor contributing to European citizens’ awareness of EU affairs. Consequently, the main question emerging in this regard is to what extent the part that the Parliament plays within the Union is capable to have direct impact on their lives. In other words, the very idea of invigorating of European citizenship concept by the European Parliament is hardly imaginable if one does not examine firstly the use of powers that the Parliament has on its disposal.

Taking as the initial premise that the leading function of every parliamentary body is legislation-making, legislative competences of the European Parliament under the Treaty of Lisbon shall prove to be rather satisfactory. Firstly, the procedure known before as “co-decision” has become standard legislation procedure, what is indicated by its new denomination of “ordinary legislative procedure”. The Parliament has thus assumed strong position on par with the Council in decision-making in most of the areas where the Union is empowered to legislate in general, and in fact it has acquired a power of “legislative veto”²³², meaning the right to effectively reject any legislative proposal thereby. Parliament also exercises power (together with the Council though) of control over so-called delegated acts, i.e. “non-legislative acts of general application” adopted by the Commission in order to supplement or amend certain non-essential elements of the legislative acts.²³³ In this regard the Parliament can not only “recall” the Commission to adopt respective implementing act, but it can object it or even revoke the delegation itself.²³⁴

There are academics²³⁵ that held that the Parliament is able to wield legislative influence also indirectly, via its influence on Union’s executive bodies. First of all,

²³¹ David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 229

²³² *ibid* 238

²³³ TFEU, Article 290

²³⁴ David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 242

²³⁵ *ibid* 229

Parliament's and Commission's term of office are synchronized, which means that the former can exercise parliamentary scrutiny and control over the latter, and so help to increase legitimacy of the Commission. This also enables the Parliament to have impact on the Commission's policy agenda by securing "prior authorization" of its annual work program.²³⁶ Another example how the Parliament can exercise indirect impact over the Commission is via its president - elected by the Parliament - who is responsible for overall guidance of the Commission's work²³⁷. Accordingly, it is presumable that the mere vote on the president could be already perceived as a way of influencing Commission's agenda, as far as the Members of Parliament could make their choice conditional on candidate's loyalty to Parliament's program.²³⁸

Besides taking an essential part in adoption of the Union's legislation, the European Parliament is called on to make a use of its constitutional-type powers, such as the power of veto employed in consent procedures and right to consultation, which is used as a procedural requirement in numerous cases. Albeit a power of veto is generally constructed as a negative one, as Dietmar Nickel points out in this respect, the assent (i.e. consent, following new wording of the Lisbon Treaty) power of the European Parliament shall be perceived as a positive as much as a negative one.²³⁹ With regard to case of matters of utmost political sensitivity, where the action of the Union requires Parliament's consent, such as breach of fundamental values of the EU by a Member State or deciding on accession of a third state to the Union, one cannot deny the Parliament political credit.

General supervisory powers of the European Parliament, in the sense of Parliamentary control over executive, shall render the Union an inter-institutional balance, democratic legitimacy and consequently the credibility towards the European citizens. As the Parliament according to the Treaty of Lisbon can scrutinize work of the Commission and the Council by various means, such as questioning them directly in an oral or written manner, or employing a Committee of Inquiry, it effectively fulfills another essential function of every standard parliamentary assembly. Last but not least, budgetary power of the European Parliament has been substantively fortified by erasing the difference between obligatory and non-obligatory items on the Union's annual budget. Thus the Parliament under the Lisbon Treaty has the right to co-decide together with the Council on the whole budget. Approving on the Commission's budgetary proposal and following-up the authorized expenditure by means of Budgetary Control Committee represents yet another way of exercising democratic control within the Union.

All in all, one can hardly speak about scarcity of formal powers in regard to the European Parliament's competences under the Treaty of Lisbon. Taken objectively, the Parliament has at its disposal all types of powers generally associated with parliamentary bodies; i.e. legislative, supervisory and budgetary. Still, the main issue is how it will actually use them. The outcome of the Parliament's activity depends both on internal factors, such as quality of the work of its committees for instance, as well as all other external factors. These can be more static, like in the case of Parliament's position and interlock with the other two bodies of Union's institutional triangle, or rather dynamic, such as overall political and contextual climate in which the Union is to be found at the time. Moreover, an account shall be taken of the very special nature of the European Union itself. In spite of its state-alike

²³⁶ David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 267

²³⁷ TFEU, Article 17 par. 6

²³⁸ David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 268

²³⁹ Author presents an instance when the assent (i.e. consent) is used in case of enlargement of the European Union, either for voting in favour or against it. In David Judge and David Earnshaw, *The European Parliament* (2nd edn, Palgrave Macmillan 2008) 195

nature, relations between the European Parliament and the Commission naturally cannot but do without the quality of straight reliance of the latter on the former, typical for states, which consequently has certain repercussions on the Parliament's political gravity. Nevertheless, with regard to constant and upward tendency of Parliamentary activism, I would argue that the Parliament's share on ensuring democratic legitimacy of the European Union has asserted solid quality, appropriate with the powers this body has assumed under the Treaty of Lisbon.

What concerns the role of the European Parliament in invigorating Union citizenship, it is important to acknowledge firstly, that the European Union lacks one of the constitutive features of every nation-state, i.e. European, or perhaps better to say Union people. After all, even the very concept of the EU citizenship is built on the premise of complementarity rather than substitution of one's nationality of a Member State. Arguably, the existence of internal Union mechanisms, such as the right to petition the European Parliament, right to file a complaint to the European Ombudsman or to take the European Citizenship' Initiative, can be instrumental in building up the "European political awareness" to some extent. However, the fact remains that even all of these, taken together with the efforts to frame the European Parliament as the body best positioned to protect benefits of European citizens, might prove to be insufficient in pursuit of "approximation" of the citizens with the Union as such. Indeed, traditional concept of citizenship, accompanied with more or less strong allegiance to one's state of nationality, is not easy to overcome, and so enhancing at least a comparable affiliation towards a supranational entity, such as the European Union, does not happen over-night. Yet, it seems much more logical that those two, i.e. citizenship of a Member State and EU citizenship should co-exist in rather utility manner, for the best interest of all European peoples, instead of competing with each other for primacy.

Moreover, as much as citizenship in general is a social and legal construct, presupposing the factor of a (state-building) "creator" and "created" (state-people), I would presume that the same applies for the Union. Therefore the overall awareness and willingness of the European peoples to be involved in the European integration project as such is an essential element of its success. Certainly, the European Parliament's role shall be to bestow on the European Union so much needed democratic legitimacy and political accountability, and combat the alleged democratic deficit of its action accordingly. Nonetheless, when assessing the state of play within the European Union realistically, one must realize that the Parliament is not almighty. It is rather troublesome to expect from this single institution to be capable of elimination of the lack of citizens' interest in European affairs and fighting with one-sided political agendas of constituent Member States. To conclude, the Treaty of Lisbon has given the European Parliament necessary powers to be a strong actor on the Union's institutional level, but at the same time, it has added on the complexity of the general functioning of the Union, which, considering the importance of inter-institutional interconnection and cooperation, has rendered the role of the European Parliament in invigorating EU citizenship and combating Union's democratic deficit quite difficult.

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